tions, requested the defendant, as operator, to file with the Committee a farm operator's report for the said farm. A true and correct copy of the applicable form of report is attached hereto as a part hereof, marked "Plaintiff's Exhibit D". The defendant has, however, failed and refused, and still fails and refuses, to make such farm operator's report for the farm.

VII

Regulations issued pursuant to Section 373 of the Act (7 U.S.C. 1373) require producers, ginners and buyers of cotton to keep specific records, and to make, to the appropriate County Committee, specified reports determined by the Secretary to be necessary to enable him to carry out, with respect to cotton, the provisions of Title III of the Act. Provision is made in the regulations for the issuance of an executed red marketing card to such producers of cotton as will have cotton available for marketing subject to marketing penalties. In connection with the issuance of a red marketing card, there is also issued to the producer a book of marketing certificates in triplicate form, one of which is to be executed by the producer and the buyer at the time each transaction between them involving the sale of cotton takes place. A copy of the executed marketing certificate is retained by the producer, and the original and the other copy thereof are retained by the buyer, who is required to forward the copy to the County Committee. The defendant in this case arranged to have a single red marketing card issued to himself for each of the farms, rather than separate cards to himself and his tenants.

VIII

The purchasers of defendant's cotton, whose names are not known to the plaintiff, have not made reports of their purchases, nor paid any marketing penalties in respect thereto. The defendant, although requested to do so, has failed and refused, and continues to fail and refuse, to complete the partially executed farm operator's report for the farms operated by him during the 1940-1941 and 1941-1942 marketing years, and to file a farm operator's report with respect to the farm operated by him during the 1942-1943 marketing year, as required by the regulations. Defendant has thereby concealed the names and addresses of the buyers of his cotton, with the result that plaintiff has been unable to ascertain from said buyers the data required to be reported by them as to their purchases from the defendant, and to require compliance by said buyers with the provisions of the Act and Regulations. The plaintiff has deducted through set off of amounts due from plaintiff to defendant's tenants on farm serial number 1358, the sum of $80.94, leaving a balance due with respect to defendant's marketing of cotton from said farm of $519.63. The defendant has also failed and refused, and still fails and refuses, to remit to the respective County Committees, for and on behalf of the Secretary, all or any part of the balance due on the marketing penalties incurred by him.

WHEREFORE, plaintiff demands:

(1) That the defendant be required specifically forthwith to complete the farm operator's reports submitted by him to the County Agricultural Conservation Com-

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 58

W. CLAY RODGERS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 28, 1947.

CERTIORARI GRANTED MAY 5, 1947.

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IN THE

DISTRICT COURT of the UNITED STATES

WESTERN DISTRICT OF TENNESSEE

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff.

Vs. No. 899 Civil

W. CLAY RODGERS,

Defendant.

APPEARANCES

For the United States, Mr. William McClanahan,
United States Attorney.
Memphis, Tennessee.

For the Defendant, Mr. W. C. Rodgers, Atty.
Exchange Building,
Memphis, Tennessee.

COMPLAINT.

Filed August 10 1945.

Plaintiff, by William McClanahan, United States Attorney for the Western District of Tennessee, acting under the direction of the Attorney General, upon request of the Secretary of Agriculture (hereinafter referred to as the "Secretary"), and the War Food Administrator, brings this complaint, and avers:

I

The defendant is a citizen of the State of Tennessee, and resides at Memphis, in the County of Shelby, in said State.

II

This action is brought under the Agricultural Adjustment Act of 1938, as amended, (7 U.S.C. 1281 et seq.), (hereinafter referred to as the "Act"), section 376 (7 U.S.C. 1376), of which vests the several Districts Courts with jurisdiction specifically to enforce the provisions of Title III thereof.

III

The purpose of this action is to enforce against the defendant the cotton marketing quota provisions of the Act (7 U.S.C. 1341-1350, 1361-1376) as amended by Public No. 74, 77th Congress, approved May 26, 1941 (7 U.S.C. Supp. III, 1340), and the provisions of the cotton marketing quota regulations for the 1940-1941, 1941-1942 and

1942-1943 marketing years (hereinafter referred to as the "Regulations"), and to collect from the defendant the penalties incurred and payable by him thereunder. The 1940-1941 regulations (Cotton 407) were issued December 9, 1939 (4 F.R. 4817-4821), and supplemented May 23, 1940 (5 F.R. 1887-1901), and June 4, 1940 (5 F.R. 2132). The 1941-1942 regulations (Cotton 507) were issued February 14, 1941 (6 F.R. 962-980), and supplemented April 16, 1941 (6 F.R. 1997-1999), and August 5, 1941 (6 F.R. 3935-3936). The 1942-1943 regulations (MQ 603 Cotton) were issued June 8, 1942 (7 F.R. 4363-4376), and supplemented June 24, 1942 (7 F.R. 4753). True and correct copies of said regulations and supplements, marked respectively as "Plaintiff's Exhibits "A", "B", and "C", are attached to the original of this complaint, but are not made a part thereof.

IV

The defendant was engaged in the production of cotton within the meaning of the Act and Regulations in 1940 on a farm operated by him in Chicot County, Arkansas, designated under the regulations by serial number 1358, and in 1941 and 1942 on farms operated by him in Tunica County, Mississippi, designated by serial number 684 and 635, respectively.

V

After the occurrence and performance of all conditions precedent, the Secretary, acting through the local county agricultural conservation committees (7 U.S.C. 1388a), established a marketing quota for each of the

farms operated by the defendant during the 1940, 1941 and 1942 crop years.

For farm serial number 1358 (1940), there were established a cotton acreage allotment of 119.5 acres, a normal yield of 290 pounds per acre, and a marketing quota of 34,655 pounds of lint cotton. For farm serial number 684 (1941), there were established a cotton acreage allotment of 168.7 acres, a normal yield of 341 pounds per acre, and an initial marketing quota of 57,527 pounds of lint cotton. For farm serial number 635 (1942), there were established a cotton acreage allotment of 174.5 acres, a normal yield of 841 pounds per acre, and an initial marketing quota of 59,504 pounds of lint cotton. Notice was duly given defendant of the acreage allotment, normal yield, and marketing quota established for each of the farms aforesaid.

VI

During the 1940-1941 marketing year, 231.8 acres were planted to cotton on farm serial number 1358, which was 112.3 acres in excess of the acreage allotment established for the farm. The defendant, as operator of the farm, filed with the County Agricultural Conservation Committe for Chicot County, Arkansas, a partially executed farm operator's report showing the production on and marketing from said farm of 54,674 pounds of lint cotton, which was 20,019 pounds in excess of the marketing quota established for the farm. The penalty incurred by defendant by reason of the marketing of such excess cotton is $600.57 (Adm. Reg. (Cotton 407) Sec. 701).

The defendant, although requested to do so, has failed and refused to furnish as part of said farm operator's report, the name and address of each buyer to whom the defendant sold such cotton.

During the 1941-1942 marketing year, 348.7 acres were planted to cotton on farm serial number 684, which was 180 acres in excess of the acreage allotment established for the farm. Defendant, as operator of the farm, filed with the County Agricultural Conservation Committee for Tunica County, Mississippi, a partially executed farm operator's report showing the production on and marketing from said farm of 160,298 pounds of lint cotton, which was 82,595 pounds in excess of the marketing quota for the farm as adjusted for actual production. The penalty incurred by defendant by reason of the marketing of such excess cotton is $5,781.65 (Adm. Reg. (Cotton 507) Sec. 701 as amended by Supp. 2). The defendant, however, failed and refused to furnish as part of said farm operator's report, the name and address of each buyer to whom the defendant sold such cotton.

There were planted 387.9 acres to cotton on farm serial number 635, during the 1942-1943 marketing year, which was 213.4 acres in excess of the acreage allotment established for the farm. Reports and information from other sources submitted to the plaintiff indicate that there was produced on and ginned from said farm at least 149,147 pounds of lint cotton, which amount is in excess of the marketing quota established for the farm. The County Agricultural Conservation Committee for Tunica County, Mississippi, acting pursuant to the regula-

mittee for Chicot County, Arkansas, with respect to farm serial number 1358, and to the County Agricultural Conservation Committee for Tunica County, Mississippi, for farm serial number 684, and to file with the County Agricultural Conservation Committee for Tunica County, Mississippi, a farm operator's report on form Cotton 417, a copy of which is attached hereto and marked "Plaintiff's Exhibit D", for farm serial number 635, containing all the information prescribed by the administrative regulations.

(2) That judgment against the defendant in favor of the plaintiff be rendered for the sum of $6,301.28, and for such further amount of money as shall be determined, upon and after the filing of the report for farm serial number 635, or otherwise, to be due and payable by the defendant to the plaintiff for and on account of cotton marketing penalties incurred by the defendant under the Act, plus interest from the time such penalties became due and payable.

(3) That plaintiff be given such other, further and different relief as this Court may deem just and proper.

UNITED STATES OF AMERICA,
By William McClanahan,
United States Attorney.
Memphis, Tennessee.

Joseph B. Zimowski,
Senior Attorney,
Office of the Solicitor,
U.S. Department of Agriculture,
Washington, 25, D. C.

MOTION TO DISMISS.

Filed September 12, 1945.

Comes Defendant and moves the Court to dismiss the complaint filed against him in the above styled cause on the ground that it states no cause of action against him, and particularly, in that:

I

The marketing quota penalties sued for in said action have been suspended, repealed, dispensed with and abrogated, and are no longer enforcible, by orders of Marvin Jones, War Food Administrator, dated July 1, 1943 and September 21, 1943, prior to the institution of this suit.

II

All actions or rights of actions claimed or alleged therein are barred by the Statute of Limitations, both Federal and State.

Wherefore, Defendant moves the dismissal of said cause of action.

W. Clay Rodgers,

Defendant.

MOTION FOR LEAVE TO AMEND COMPLAINT

Filed November 9, 1945.

Comes the plaintiff, United States of America, and moves the Court that the plaintiff, United States of America, be allowed to amend the original complaint filed in this cause by plaintiff on September 12, 1945, as follows:

First: By inserting on page 3, after the second sentence in the first paragraph of paragraph VI, the following:

> "defendant marketed said excess cotton while farm marketing quotas were in effect."

Second: Inserting at page 4, after the second sentence in the second paragraph of paragraph VI, the following:

> "defendant marketed said excess cotton while farm marketing quotas were in effect."

Third: Striking the remainder of the sentence on page 6, paragraph 1, line 6, after the words "farm serial number 684", and substituting therefor the following:

> "and to file with the County Ariculttral Conservation Committee for Tunica County, Mississippi, farm operator's reports on forms Cotton 417, a copy of which is attached hereto and marked 'Plaintiff's Exhibit D' for farm serial number 635, for the periods designated by the regulations, and containing all of the information prescribed therein."

Motion for leave to amend complaint.

Fourth: Inserting at page 7, paragraph 2, line 2, after the words "for the sum of $6,301.28 and", the following:

"that the Court retain jurisdiction of this cause and enter a judgmgent in favor of plaintiff."

Fifth: At page 7, paragraph 2, line 4, making the word "report"' plural.

WILLIAM McCLANAHAN,
United States Attorney,

By Robt. G. Jeter,
Assistant United States Atty.
Attorney for Rlaintiff.

This will acknowledge receipt of a copy of the Motion for Leave to Amend the Complaint.

ORDER GRANTING LEAVE TO AMEND COMPLAINT

Entered November 9, 1945. Marion S. Boyd, Judge.

This cause came on to be heard on plaintiff's written motion for leave to amend the complaint herein, and it appearing to the Court that such an amended complaint would clarify the issues herein, and should be allowed,

It is ORDERED that the motion for leave to amend be, and the same is hereby, granted.

This 9 day of, November, 1945.

APPROVED:

Robt. G. Jeter,

Assistant United States Attorney.

AMENDMENTS TO ORIGINAL COMPLAINT

Filed November 9, 1945.

Amendments to the complaint in this cause made pursuant to an order of the Court on the 9th day of November, 1945.

First: By inserting on page 3, after the second sentence in the first paragraph of paragraph VI, the following:

> "defendant marketed said excess cotton while farm marketing quotas were in effect."

Second: Inserting at page 4, after the second sentence in the second paragraph of paragraph VI, the following:

> "defendant marketed said excess cotton while farm marketing quotas were in effect."

Third: Striking the remainder of the sentence on page 6, paragraph 1, line 6, after the words "farm serial number 684", and substituting therefor the following:

> "and to file with the County Aricultural Conservation Committee for Tunica County, Mississippi, farm operator's reports on forms Cotton 417, a copy of which is attached hereto and marked 'Plaintiff's Exhibit D' for farm serial number 635, for the periods designated by the regulations, and containing all of the information prescribed therein."

Amendments to original complaint.

Fourth: Inserting at page 7, paragraph 2, line 2, after the words "for the sum of $6,301.28 and", the following:

> "that the Court retain jurisdiction of this cause and enter a judgmgent in favor of plaintiff."

Fifth: At page 7, paragraph 2, line 4, making the word "report'" plural.

WILLIAM McCLANAHAN,

United States Attorney,

By Robt. G. Jeter,

Assistant United States Atty.

Attorney for Plaintiff.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS.

Entered November 27, 1945. Marion S. Boyd, Judge.

This cause came on to be heard on the 19th day of November, 1945, on defendant's motion to dismiss the complaint herein, on the ground that the cotton marketing quota penalties sued on under the Agricultural Adjustment Act of 1938 have been terminated by orders of the War Food Administrator, and are, therefore, not enforcible for the crop years in question; and

The Court, after consideration of the pleadings, briefs and argument of counsel, and on authority of the following cases, to-wit:

United States v. Hark, et al, 320 U.S., 531,

United States v. Curtiss-Wright Export Corp., 299 U.S., 304,

Bowles, Admr., O.P.A. v. May Hardwood Co., et al, (C.C.A. 6th), 140 Fed. (2nd), 914,

is of the opinion defendant's motion is without merit, and should be denied.

IT IS, THEREFORE, ORDERED AND ADJUDGED that defendant's motion to dismiss the complaint herein be, and the same is hereby, denied, to which action of the Court the defendant duly excepts.

ANSWER OF DEFENDANT.

Filed February 4, 1946.

Comes defendant, Wm. Clay Rodgers, and for answer to the Complaint heretofore filed against him in this cause, says:

Defendant admits paragraphs I, II, III, IV and VII, but denies paragraphs V, VI and VIII, and further states the facts to be that he did make reports as demanded by the County Agricultural Agents or Committee, but admits that he did not report the purchasers of his cotton, this not being required, as he construes the Act and Regulations. His reason for this being all the cotton sold by the defendant not covered by red cards, so called, was 1-1/2 in staple length, or better, and not subject to the Act or Regulations; that so far as the 1942 crop was concerned, all the cotton sold in excess of the allotments was either 1.1/2 inches, or better, in staple, or was sold in July 1944, long after the suspension and termination of all penalties and regulations.

Further, defendant would show to the Court that said Act, and all rules and regulations promulgated thereunder, were suspended or terminated on or about July 10th, 1943, by proper order and proclamation of the National War Food Administrator, who was then vested with this power and authority, and such suspension and termination has been continued in full force and effect to date, either by the Food Administrator or the United States Secretary of Agriculture, who is likewise vested

with such power and authority by the Act and Regulations.

Wherefore, the defendant says he does not owe the amounts claimed and sued for, in the first place, and, in the second place, that these suspensions and terminations of said Agrgicultural Adjustment Act of 1938, and the regulations promulgated pursuant thereto, suspended and terminated all right to demand or recover all penalties theretofore incurred, and defendant is no longer liable for penalties arising thereunder, and the same are not now enforcible by this suit, or otherwise.

Therefore, having fully answered, the defendant prays to be dismissed with his reasonable costs.

W. C. Rodgers,
Defendant
1001-2 Exchange Bldg.,
Memphis, Tennessee.

STIPULATION.

Filed February 21, 1946.

In this cause, it is stipulated and agreed by and between the Attorney for the Government and the defendant, W. Clay Rodgers, that in lieu of introducing any proof, and to save expenses, this case can be tried upon this stipulation, together with the Exhibits heretofore filed with the Clerk by the plaintiff, and the entire record on file.

The parties stipulate and agree as follows:

I

It is agreed that this action is brought under the Agricultural Adjustment Act of 1938, as amended, and the Regulations issued thereunder, and as set out in the complaint filed in this cause.

II

It is further stipulated and agreed that the defendant was engaged in the production of cotton as set out in the petition, and within the meaning of the Agricultural Adjustment Act and Regulations in 1940 on a farm owned and operated by defendant in Chicot County, Arkansas, designated under the Regulations by Serial No. 1358, and in 1941 and 1942, on farms owned and operated by defendant in Tunica County, Mississippi, designated by Serial Nos. 684 and 635, respectively.

III

It is further stipulated by the parties that for the year 1940, the defendant was allotted 119.5 acres of cotton on his farm Serial No. 1358, owned and operated by defendant in Chicot County, Arkansas, and that the defendant planted 231.8 acres of cotton in 1940, or an excess acreage of cotton for 1940 in the amount of 112.3 acres. That in 1940, the defendant was allotted under the Act a quota of 34,655 pounds of cotton, and that the defendant raised and marketed during the 1940-1941 marketing year 54,674 pounds of cotton, or excess cotton in the amount of 20,019 pounds, and that this excess cotton was marketed by the defendant while farm marketing quotas were in effect, and that the penalty for the cotton marketed in 1940 amounts to 3 cents per pound, and that the amount of the penalty due on the 1940 cotton that was raised and marketed by defendant amounts to the sum of $600.57.

IV

It is further stipulated and agreed by the parties that for the year 1941, the defendant was allotted 168.7 acres of cotton on his farm Serial No. 684, owned and operated by defendant in Tunica County, Mississippi, and that defendant planted in 1941 348.7 acres of cotton, or an excess acreage of cotton in the amount of 180 acres. That in 1941, the defendant, under the Agricultural Adjustment Act, was allotted a quota of 77,703 pounds of cotton, and that the defendant raised and marketed during the 1941-1942 marketing year, while cotton farm mark-

eting quotas were in effect, 160,298 pounds of cotton, or excess cotton in the amount of 82,595 pounds. And it is agreed by the parties that the penalty for 1941 was 7 cents per pound, and that the amount of the penalty due on the 1941 cotton that was raised and marketed by defendant while farm marketing quotas were in effect, amounts to the sum of $5,781.65.

V

It is further stipulated and agreed that for the year 1942, the defendant was allotted under the Act 174.5 acres of cotton on his farm Serial No. 635, owned and operated by defendant in Tunica County, Mississippi, and that defendant planted 387.9 acres of cotton, or an excess acreage of cotton in the amount of 213.4 acres. That for the year 1942, the defendant was allotted a quota of 67,095 pounds of cotton, and that the defendant raised and marketed during the 1942-1943 marketing year 149,147 pounds of cotton, or excess cotton in the amount of 82,052 pounds, which excess cotton was marketed by defendant while farm marketing quotas were in effect.

It is agreed by the parties that 19,436 pounds of this cotton was over 1-1c2 inch, and that 52,968 pounds of this cotton was sold after August 1, 1943, and that one bale, weighing 420 pounds, was destroyed by fire, making a total of 72,824 pounds upon which no penalty attached.

It is agreed that the defendant raised and marketed in 1942, while farm marketing quotas were in effect,

9,228 pounds of excess cotton, and that the penalty for 1942 was 8 cents per pound, and that the penalty amounts to the sum of $738.24. However, it is further agreed that the defendant is entitled to a benefit payment setoff in the amount of $80.94, and that the penalty, after allowing for the setoff, amounts to the sum of $657.30.

VI

"It is further stipulated that the total amount of the cotton marketing penalties for the years 1940, 1941 and 1942 amount to the sum of $7,039.52, and same are unpaid. And the defendant stipulates and agrees that the only questions involved are legal questions as to whether or not the farm marketing quota penalties for the marketing years of 1940-1941, 1941-1942 and 1942-1943 have been suspended by orders of the War Food Administrator issued in July and September, 1943, 8FR 12, 922-12, 923, and (the Secretary of Agriculture) November 1944 and 1945 F.R. 44-17515 and 45-20837, and the question of law as to whether or not interest should be allowed on the penalties." R. p. 21. (Parenthesis supplied).

It is further stipulated that true and correct copies of said Regulations and Supplements of the Agricultural Adjustment Act, marked respectively as plaintiff's Exhibits "A", "B", "C" and "D", have been filed with the Clerk of the Court, and may be used as evidence.

VIII

It is further stipulated that the defendant has failed to file Farm Operaor's Reports, as alleged in the com-

plaint, and it is agreed that this stipulation may be filed and read as evidence in this cause.

This the 21st day of February, 1946.

Robt. G. Jeter,

Attorney for Plaintiff.

W. C. Rodgers,

Attorney for Defendant.

FINAL JUDGMENT.

Entered March 4, 1946. Marion S. Boyd, Judge.

This cause came on to be heard the 28th day of February, 1946, on the written sttipulation of facts entered into between the United States of America, plaintiff, and W. Clay Rodgers, defendant, and on the pleadings, briefs and argument of counsel; and

Said written sttipulation being hereby adopted as the Court's Findings of Fact; and

It appearing that the only questions involved are whether or not the Farm Marketing Quota Penalties for the marketing years 1940-1941, 1941-1942 and 1942-1943 have been suspended by orders of the War Food Administrator, issued in July and September, 1943, and whether or not interest should be allowed on said penalties; and

The Court, upon said Stipulation and Findings of Fact, and for the reasons, and upon the authorities set out in the order heretofore entered, overruling defendant's motion to dismiss the complaint, is of the opinion that the marketing penalties for the marketing years 1940-1941, 1941-1942 and 1942-1943 were not suspended by said orders of the War Food Administrator, and that defendant's contention in this respect is without merit, and that defendant has violated the Agricultural Adjustment Act of 1938, the amendments and regulations pursuant thereto, and is subject to the penalties imposed thereunder; and, further, that for reasons of equity and fairness, interest at the rate of six per centum (6o/o) per annum should be allowed as of the effective date of said penalties;

IT IS THEREFORE ORDERED AND ADJUDGED that plaintiff have and recover judgment of the defendant as follows:

Penalty in the amount of $600.57, with interest thereon at the rate of six per centum (6o/o) per annum from March 1, 1941, to and including February 28, 1946, making a total amount of $780.42 as penalty and interest for

tthe marketing year 1940-1941; penalty in the amount of $5,781.65, with interest at the rate of six per centum (6o/o) per annum from March 1, 1942, to and including February 28, 1946, making a total amount of $7,166.32 as penalty and interest for the marketing year 1941-1942; and penalty in the amount of $657.30, with interest at the rate of six per centum (6o/o) per annum from March 1, 1943, to and including February 28, 1946, making a total amount of $775.24, as penalty and interest for the marketing year 1942-1943; the total amount of the judgment herein being the sum of $8,721.98, covering penalties and interest due thereon for cotton raised in excess of quotas under the Agricultural Adjustment Act of 1938, amendments and regulations pursuant thereto.

It further appearing to the Court that the defendant herein has failed or refused to file Farm Operator's Report for the marketing year 1942-1943, as required by the Act;

IT IS FURTHER ORDERED AND ADJUDGED that the defendant, W. Clay Rodgers, shall forthwith complete and file said report.

IT IS FUURTHER ORDERED AND ADJUDGED that the defendant will pay all costts of this action, for which execution may issue.

NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS.

Filed March 8, 1946.

Notice is hereby given that W. Clay Rodgers, the defendant, appeals to the Circuit Court of Appeals for the Sixth Circuit from the Final Judgment (decree) entered in this cause on March 4, 1946, in favor of the plaintiff, and against the defendant, for the total sum of $8,721.98, and the costs of the cause.

This March 7, 1946.

W. C. Rodgers,

Defendant.

SUPERSEDEAS BOND.

Filed April 3, 1946.

KNOW ALL MEN BY THESE PRESENTS, that we, W. C. Rodgers, as principal, and The Aetna Casualty and Surety Company, as surety, are held and firmly bound

unto the above named plaintiff, United States of America, in the full and just sum of Nine Thousand and No/100 Dollars ($9,000.00), to be paid to the said Plaintiff, or its assigns, to which payment the said defendant, his heirs, executors, administrators, successors or assigns, jointly and severally by these presents.

Executed this 3rd day of April, 1946.

The Condition of this obligation is such that:

Whereas, on the 4th day of March, 1946, in the above entitled action between the above named Plaintiff, United States of America, and the above named Defendant, W. Clay Rodgers, a judgment in the amount of $8,721.98 was rendered against the said Defendant, and the said Defendant has appealed to the United States Circuit Court of Appeals for the Sixth Circuit.

Now, therefore, if the said W. Clay Rodgers shall satisfy the aforesaid judgment in full, together with costs, interest and damages for delay, or for any reason the appeal is dismissed, or if the judgment is affirmed, and shall satisfy in full such modification of the judgment and such costs, interests and damages as the Appellate Court may adjudge and award, then this obligation to be void; otherwise in full force and effect.

W. Clay Rodgers,

W. C. Rodgers,

Principal.

Bond

THE AETNA CASUALTY & SURETY CO.

By J. J. Morrison,

Resident Vice President.

ATTEST: J. W. Wendel,

Resident Asst. Secretary.

(SEAL)

APPROVED:

Marion S. Boyd,

Judge.

4-3-46.

ORDER EXTENDING TIME TO COMPLETE RECORD ON APPEAL AND FILING SAME IN THE U. S. CIRCUIT COURT OF APPEALS.

Entered April 11th, 1946. Marion S. Boyd, Judge.

It appearing to the Court that additional time is necessary for preparing the record in this cause and filing same in the United States Circuit Court of Appeals;

The Court hereby orders that the time be, and is hereby, extended fifty days from this date for preparing said record on appeal and filing same in the United States Circuit Court of Appeals.

ORDER: DIRECTING ORIGINAL EXHIBITS BE SENT TO U. S. CIRCUIT COURT OF APPEALS.

Entered April 11th, 1946. Marion S. Boyd, Judge.

Upon application of defendant, IT IS ORDERED that the Clerk of this Court is authorized and directed to send to the Circuit Court of Appeals all original exhibits in the above styled case, and that same need not be printed as part of the record on appeal.

O.K. Robt. G. Jeter,

Attorney for Plaintiff.

O.K. W. C. Rodgers,

Attorney for Defendant.

APPELLANT'S DESIGNATION OF POINTS RELIED UPON ON APPEAL.

Filed April 17 ,1946.

I

The 1938 Agricultural Adjustment Act, as amended, is suspended, and the penalties provided therein cannot be enforced during the suspension, there being no saving clause.

II

Interest is not recoverable on penalties.

III

This is a suit in equity for penalties, which is not favored, and interest should not be allowed under either State or Federal laws.

W. C. Rodgers,

Defendant.

PRAECIPE.

Filed April 17, 1946.

Comes Defendant and designates the following items as constituting the Record on Appeal:

1 The origingal complaint.

2 Defendant's Motion to Dismiss.

3 Motion for Leave to Amend Complaint.

4 Order Granting Leave to Amend Complaint.

5 Amendments to Original Complaint.

6 Order Denying Defendant's Motion to Dismiss.

7 Answer of Defendant.

8 Stipulation.

9 Final Judgment.

10 Notice of Appeal to Circuit Court of Appeals.

11 Supersedeas Bond.

12 Appellant's Designation of Points Relied Upon on Appeal.

W. C. Rodgers,

Defendant.

CLERK'S CERTIFICATE

DISTRICT COURT OF THE UNITED STATES
SIXTH JUDICIAL CIRCUIT
WESTERN DISTRICT OF TENNESSEE

I, W. LLOYD JOHNSON, Clerk of the District Court of the United States, for the Western District of Tennessee, do hereby certify that the papers hereto attached are full, true, perfect, and correct copies of the original record and proceedings as called for by praecipe of Appellant in said Court as the same now appears of record and upon the files in my office, in the following cause, to-wit:

W. CLAY RODGERS,

Appellant.

Vs. **No. 899 Civil**

UNITED STATES OF AMERICA.

Appellee.

IN TESTIMONY WHEREOF, I have hereunto written my name and affixed the Seal of said Court, at my office in the City of Memphis, Tennessee, this 19th day of April, A. D. 1946, and of the Independence of the United States the 170th year.

(SEAL) (Signed) W. LLOYD JOHNSON.

Clerk.

AUTHENTICATION

I, MARION S. BOYD, a Judge of said Court, do hereby certify that W. Lloyd Johnson, whose genuine signature appears to the foregoing certificate is, and was at the date of the same, Clerk of said Court and that his attestation is in due form.

(Signed) Marion S. Boyd,

Judge of the District Court of the United States for the District aforesaid.

CLERK'S CERTIFICATE OF PRINTED RECORD

UNITED STATES OF AMERICA,

ss:

WESTERN DISTRICT OF TENNESSEE

I, W. LLOYD JOHNSON, Clerk of the District Court in and for the Western District of Tennessee, do hereby certify that the annexed and foregoing is a true and complete copy of the printed record in the case of:

W. CLAY RODGERS,

Defendant-Appellant,

Vs. **No. 899 Civil**

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Memphis, Tennessee, this the ..... day of .....: A.D., 1946.

.....

Clerk.

PROCEEDINGS IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(December 7, 1946—Before: HICKS, SIMONS and MARTIN, JJ.)

This cause is argued by W. C. Rodgers for Appellant and by James A. Doyle for Appellee and is submitted to the Court.



JUDGMENT

(Filed and Entered January 13, 1947)

Appeal from the District Court of the United States for the Western District of Tennessee.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Tennessee, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed January 13, 1947)

Before HICKS, SIMONS and MARTIN, Circuit Judges.

SIMONS, Circuit Judge. The judgment challenged in the present appeal is for so-called penalties pursuant to the Agricultural Adjustment Act as amended (7 U. S. C. A. 1281 et seq.), imposed upon the appellant for marketing excess quota cotton in the years 1940, 1941 and 1942. Subordinate questions involve interest upon the judgment and interest from the time the penalties should have been remitted to the Secretary of Agriculture, such interest having been included and provided for in the judgment.

The Act (7 U. S. C. A. 1341 et seq.) provides that not later than November 15 of each year the Secretary of Agriculture shall find and proclaim the total supply, the normal supply and the carry-over of cotton as of August 1 of each year, the principal domestic consumption during the marketing year commencing August 1, the principal exports of cotton during such year and the estimated carry-over of cotton as of August 1 next succeeding. If the Secretary finds that the total supply of cotton for the marketing year exceeds by more than 7% the normal supply for such year, he is required to proclaim such fact and marketing quotas shall be in effect during the next succeeding marketing year unless more than one-third of the farmers who are engaged in its production in the preceding year, disapprove thereof in a referendum conducted by the Secretary. Standards for determining quotas are provided and the cotton is apportioned to the states on a baleage basis, which is converted to acres and apportioned to each farm. A producer who markets cotton in excess of the quota established for his farm, must remit to the Secretary the amount per pound prescribed pursuant to the Act.

The facts are not in dispute. The appellant marketed cotton in excess of the quota for the years 1940, 1941, and 1942. The penalties on such excess totaled $7039.52, and are unpaid. As established for the 1940-41 marketing year (7 U. S. C. A. 1348), they were at the rate of 3 cents

per pound, for 1941-42, 7 cents per pound and for 1942-43, 8 cents per pound. Liability for collection of the penalty is primarily upon the buyer of cotton but the producer remains liable for its payment if it is not collected by the buyer or transferee. Prepayment of the penalty may be made, and under certain conditions the producer may deposit it in escrow or give a bond to secure its payment. Quotas were in effect during the years involved and were proclaimed for 1943-44 and approved by the producers. However, on July 10, 1943, the War Food Administrator terminated the quotas for that year as "necessary in order to meet the present emergency and to effectuate the declared policy of the Act." 8 Fed. Reg. 12922, 12923. On September 21, 1943, the War Food Administrator proclaimed that cotton marketing quotas would likewise not be in effect for the marketing year beginning August 1, 1944, in pursuance of the provisions of the Act, "that the powers therein granted shall not be used to discourage the production of sufficient supplies of foods and fibers to maintain normal domestic consumption, taking into consideration current trends in consumption and export and the quantities of substitutes available at fair prices."

The appellant's principal contention is that because cotton quotas were suspended for the 1943-44 marketing year and have not since been renewed, the penalties for which judgment was rendered are not recoverable. He relies upon § 371 of the Act (7 U. S. C. A. 1371), which authorizes the Secretary of Agriculture to increase or terminate existing quotas when he finds, upon investigation, that the commodity which is free of marketing restrictions equals the normal supply. He asserts the principle that after the expiration or repeal of a law no penalties can be enforced or punishment inflicted for violations of the law during the time when it was in force, unless provision is made for that purpose by statute. There is no "saving clause" in the Agricultural Adjustment Act, nevertheless, his contention must be rejected. *U. S.* v. *Hark*, 320 U. S. 531; *U. S.* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304; *Bowles* v. *May*

Hardwood Co., 140 Fed. (2d) 914 (C. C. A. 6); *O'Neal* v. *U. S.*, 140 Fed. (2d) 908 (C. C. A. 6), cert. den. 322 U. S. 729. This conclusion is not compelled and gains nothing from the Act of March 22, 1944, Title 1, § 29 U. S. C. A., which, in effect, imports a "saving clause" into every repealed statute providing for a penalty, forfeiture or liability unless precluded by the terms of the statute itself. Section 29, prescribing a rule differing from that of the common law, must be strictly construed and limited to repealed statutes. *U. S.* v. *Hark*, 49 Fed. Supp. 95, D. C. Mass., reversed on other grounds, 320 U. S. 531.

In the *Hark* case the Supreme Court pointed out that the common-law rule that the repeal of a statute ends the power to prosecute for prior violations is absent in the case of a prosecution for violation of a regulation issued pursuant to an existing statute which expresses a continuing policy to enforce which the regulation was authorized. Revocation of the regulation does not repeal the statute. Neither the Agricultural Adjustment Act nor its provisions regulating the production of cotton, have been repealed. The Act still expresses a continuing policy and the suspension orders of the Administrator are declared to be in pursuance of that policy. The appellant may draw no comfort from *U. S.* v *Chambers*, 291 U. S. 217, wherein it is declared that in case a statute is repealed or rendered inoperative, no further proceedings can be had to enforce it unless competent authority has kept it alive for that purpose. The present statute, as already observed, has not been repealed nor has it been rendered inoperative. So long as it remains in effect, quotas may be established whenever the conditions prescribed demand them and the purpose of the Act is to be served. The *Chambers* case dealt with the National Prohibition Law. It had not then been repealed but its continued efficacy was terminated by controlling action from the very source of power which permitted it to be enacted and enforced. No such authority has here been withdrawn by the only power competent to withdraw it—the Congress of the United States.

The appellant's contention that no interest is collect-

ible on the penalties, is based upon Title 28, § 811 U. S. C. A. which permits the allowance of interest on civil judgments in all cases where, by the law of the state, such interest may be recovered, and the rule in Tennessee that interest is not recoverable on penalties. *McCreary* v. *First Nat'l Bank*, 109 Tenn. 128. This requires consideration whether the so-called penalties provided in the Agricultural Adjustment Act are, in essence, true penalties.

In common parlance and by dictionary definition the term "penalty" is more commonly applied to punishment for crime or other offenses. Bouvier defines it as "*punishment inflicted by law for its violation.*" The words "penal" and "penalty" in their strict and primary sense, denote a punishment provided by statute for an unlawful act. *U. S.* v. *LaFranca*, 282 U. S. 568; *U. S.* v. *Chouteau*, 102 U. S. 603; *U. S.* v. *Jaffrey*, 97 Fed. (2d) 488 (C. C. A. 8). In the last cited case it was said that the term "penalty" involves the idea of punishment and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal one. See also *U. S.* v. *$420*, 162 Fed. 803, D. C. S. D. Ala.

In *Usher* v. *U. S.*, 146 Fed. (2d) 369, the Circuit Court of Appeals for the Fourth Circuit, in deciding that liability for penalties under the present Act need not be established by proof beyond a reasonable doubt, said: "The object of the Act and the regulation was to prevent an over-production of cotton. It was not a crime to produce cotton in excess of the allotment, but if there was such over-production the penalty was imposed, not as a punishment for crime, but to prevent over-production of the commodity. The grower was at liberty to produce all the cotton he wished to produce provided this penalty was complied with. The penalty differs from an ordinary penalty which is imposed in connection with the commission of an unlawful act. It is significant . . . that the administrative regulations provide that the penalty may be prepaid, deposited in escrow, or secured, by the producer. . . ."

We are persuaded that the so-called penalties prescribed in the Act are not in a true sense the penalties considered by the Tennessee Court upon which interest was held not recoverable. The *McCreary* case, supra, involved penalties under the National Banking Act for usury, an imposition that was definitely penal in nature and therefore subject to the rule of strict construction. There is, under the statute here involved, no prohibition upon the production or marketing of excess quota cotton. Under its power to regulate interstate commerce the Congress, to avoid a wasteful, uneconomic surplus, provided for the establishment of quotas and sought to discourage production and sale in excess of such quotas. We said in *Fraser* v. *U. S.*, 145 Fed. (2d) 139, "No question of due process inheres in holding the buyer who collects the penalty liable for its payment. When with due notice he buys non-quota cotton he subjects himself to the provisions of the Act and may not complain. He is under no obligation to buy." Similar language may be applied to the seller. He is under no obligation to produce, and having produced is under no obligation to sell; but selling, he incurs an obligation to the Secretary of Agriculture. It is a debt which arises through operation of law. It may not be enforced by criminal sanctions, as in the case of a fine. It is not imposed as punishment but to carry out the power of Congress to regulate transactions in interstate commerce.

U. S. v. *West Texas Cottonoil Co.*, 155 Fed. (2d) 463 (C. C. A. 5), is, in one aspect, in conflict with the view here expressed. There the court drew a distinction between interest recoverable on penalties and interest recoverable on a judgment for penalties, sustaining interest on the judgment but denying recovery of interest prior to judgment, saying, "Since in fact and in law the amount sued for is a penalty no interest can be recovered on it before judgment." It does not appear, however, that in that case the distinction here and elsewhere drawn between a true penalty as punishment for law violation and a sanction such as is here involved, was pressed upon or given consideration by the court. In any event, the case

is authority for the proposition that the judgment below may bear interest from the date of its pronouncement.

There is left the question whether the court was in error in adding to the penalties interest from the date when the penalties should have been remitted to the Secretary. The general rule, of course, is that liquidated demands bear interest while those unliquidated do not. Where, however, the amount can be determined by mere computation at the commencement of the action, interest is recoverable from the date the liability accrues. *Abell* v. *Anderson*, 148 Fed. (2d) 372 (C. C. A. 6); *Robertson* v. *Miller*, 286 Fed. 503 (C. C. A. 2). The amount of the grower's quotas was fixed. The number of pounds sold over quota was known, as was the penalty per pound. Nothing was left to be done except a simple mathematical computation at the time the excess cotton was marketed. The appellant's liability was then fixed and determinable. This is clearly recognized in the provisions of the Act which permit prepayment of the penalty, its deposit in escrow or the filing of a bond to secure its payment.

AFFIRMED.

CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

I, J. W. MENZIES, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of *W. Clay Rodgers* v. *United States of America*, No. 10264, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 4th day of March, A. D. 1947.

J. W. MENZIES,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(SEAL)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 5, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the first two questions presented by the petition for the writ. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Supreme Court, U. S.
FILED
MAR 28 1947
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

W. CLAY RODGERS,
Petitioner
vs.
UNITED STATES OF AMERICA,
Respondent

April Term, 1947.
No. 58

PETITION FOR WRIT OF CERTIORARI
TO
UNITED STATES SIXTH CIRCUIT COURT OF APPEALS

New York Law Reporting Co., Law Printers, N. Y. C.

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IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA

W. CLAY RODGERS,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

April Term, 1947.

No._____

PETITION FOR WRIT OF CERTIORARI
TO
UNITED STATES SIXTH CIRCUIT COURT OF APPEALS

To The Honorable, The Chief Justice, and The Associate Justices of The Supreme Court of the United States:

Petitioner, W. Clay Rodgers, prays this Court to review, on Writ of Certiorari, an affirmance by the Sixth Circuit Court of Appeals on January 13, 1947, in the case of W. Clay Rodgers, Appellant, vs. United States of America, Appellee, of a judgment of the United States District Court for the Western District of Tennessee rendered March 4, 1946, for the total sum of $8,721.98, made up of $7,039.52, principal, cotton penalties, and $1,682.46, interest before judgment.

SUMMARY STATEMENT OF THE CASE

This is a suit to recover cotton penalties provided by the 1938 Agricultural Adjustment Act (7 U.S.C.A. 1281 et seq., 1348) as amended by Public 74, 77th Congress, approved May 26, 1941 (7 U.S.C.A. Supp. III, 1340), and Regulations promulgated thereunder by the Secretary of Agriculture, and to require Defendant to file certain reports provided for therein. R. pp. 2-8, 10 and 11.

Defendant moved to dismiss on the grounds that said Act and Regulations were then suspended by orders of the War Food Administrator (and later by the Secretary of Agriculture) and such penalties were therefore not recoverable. R. p. 9.

This motion was denied. R. p. 15.

Defendant then answered, admitting the formal parts of the Complaint, and avering he had filed the reports sought, with the exception of a minor detail—the names of the purchasers of the cotton for one year—but denying liability for the penalties, on the grounds that these are not enforceable because the Act and Regulations are now suspended. R. pp. 16 and 17.

The evidence was stipulated. R. pp. 18-22.

The pertinent paragraph reading:

> "It is further stipulated that the total amount of the cotton marketing penalties for the years 1940, 1941 and 1942 amount to the sum of $7,039.52, and same are unpaid. And the Defendant stipulates and agrees that the only questions involved are legal questions as to whether or not the farm marketing quota penalties for the marketing years of 1940-1941, 1941-1942 and 1942-1943 have been suspended by orders of

the War Food Administrator issued in July and September, 1943, 8FR 12, 922-12, 923, and (the Secretary of Agriculture) November 1944 and 1945 F. R. 44-17515 and 45-20837, and the question of law as to whether or not interest should be allowed on the penalties. R. p. 21. (Parenthesis supplied)." R. p. 21, Par. VI.

On March 4, 1946, the District Court rendered judgment against Defendant for the principal sum of $7,039.52, penalties, plus $1,682.46, interest, or a total of $8,721.98, and costs, from which Defendant appealed to the Sixth Circuit Court of Appeals. R. pp. 22, 26, 32 and 33. That Court affirmed. R. p. 35.

JURISDICTION OF THIS COURT

Jurisdiction of this Court is based on Section 347, Title 28, U.S.C.A., Section 240, Judicial Code, as amended.

QUESTIONS PRESENTED

1. Should interest on penalties be allowed prior to judgment?

2. Are the exactions here imposed, in reality, penalties, or a mere debt.

3. Can such penalties be recovered while the Act and Regulations prescribing these are suspended?

REASONS RELIED ON FOR GRANTING WRIT

1. There is a conflict in the opinions of the Sixth Circuit Court of Appeals in this case, and that of the Fifth Circuit Court of Appeals in the case of U. S. vs. West

Texas Cotton Oil Company, 155 Fed., 2nd., 463, in that, the latter Court held "since in fact and in law, the amount sued for is a penalty, *no interest* can be recovered on it *before judgment.*"

While, the lower court (Sixth Circuit) here affirmed the recovery of interest on identically the same penalties prior to judgment. R. p. 41.

2. Again, the Fifth Circuit, Supra, held the very imposition here complained of to be "* * *in fact and in law* * * *a penalty*", but the Sixth Circuit reached exactly the opposite conclusion:

> "This requires consideration whether the so-called penalties provided in the Agricultural Adjustment Act are, in essence, *true penalties.*" R. p. 39.

And conclude:

> "We are persuaded that the so-called penalties prescribed *in the Act* are not in a true sense the penalties considered by the Tennessee Court upon which interest was held not recoverable." R. p. 40.
>
> "* * It is a *debt* which arises through operation of law. R. p. 40.
>
> "* * It does not appear, however, that in that case (U. S. vs. West Texas Cotton Oil Co.) the distinction here and elsewhere drawn *between a true penalty* as punishment for law violation and a sanction such as is here involved, was passed upon or given consideration by the Court." R. p. 40.

This holding is also in conflict with that of the 9th Circuit Court of Appeals in the case of Western Fruit Growers vs. U. S., 124, Fed. (2nd) 381, where, on page 387, it is announced:

"The Agricultural Adjustment Act, in our opinion *is penal in nature* and therefore exclusive jurisdiction is in the Federal Courts to enforce it or to prevent it's violation."

3. In this case, the lower court has held that the suspension of the provisions of the Statute (Section 1348, Title 7, U.S.C.A., Section 348, Agriculture Adjustment Act, as amended; public 74, 77th Congress, approved May 26, 1941, 7, U.S.C.A. Supp. III, 1340), first, by the War Food Administrator (July 10th, 1943, and September 21st, 1943, 8FR, 12922 and 12933 for the years 1943 and 1944, authorized by Executive Orders, 9222 and 9334, 8FR 3807 and 5433), second, by the Secretary of Agriculture for the years 1945 and 1946 (9FR, 13739-13740; 10FR, 14135) by direction of Section 371 of the Act (Section 1371, Title 7, U.S.C.A.), and, third, by Joint Resolution of Congress for 1947 (Joint Res. July 24, 1946, C. 616, 60 Stat. 662) is, in reality, not a suspension of the Statute, contrary to the great weight of authority. R. pp. 37 and 38.

BRIEF AND ARGUMENT

To avoid repetition, Petitioner begs leave to rely upon the Summary Statement, etc., Supra.

ASSIGNMENT OF ERRORS

1. The Sixth Circuit Court of Appeals erred in holding interest on penalties recoverable before judgment.

2. The Lower Appellate Court erred in holding the impositions here exacted to be "a debt which arises through operation of law" instead of a "true penalty."

3. They likewise erred, in holding that said penalties were enforceable during the suspension of the provisions of the Statute, and activating Regulations, in the absence of a saving clause.

DISCUSSION OF FIRST ERROR ASSIGNED

This raises the question as to whether interest, before judgment, should be allowed.

In the case of U. S. vs. West Texas Cotton Oil Company, 155 Fed., 2nd, 463, that Court expressly determines that, "*no interest can be recovered* on" the specific penalties here involved "*before judgment.*"

This is not only consonant with the established law of Tennessee, where this case originated, but with the great weight of authority.

> "• • Laws prescribing penalties and forfeitures are strictly construed, and, in the absence of any authority *in the act for interest on the penalty, we can not superadd it.* Duncan vs. Maxey, 5 Sneed."
>
> McCleary vs. First National Bank, 109, Tenn. (1 Cates) p. 142.
>
> "At common law judgments do not bear interest; *interest rests solely upon statutory provisions.* Perkins vs. Fourniquet, 14 How. 328."
>
> Washington & Georgetown R. R. Co. vs. Harman, 147, U. S. 571, 584-5.
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> Pierce vs. U. S. 255, U. S. 398, p. 406, 65 L. Ed. 697.
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> U. S. vs. Jacob Schmidt Brewing Co., 254, Fed., 714.
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> Phillips vs. Greene, 288 Ky. 202, 155 S. W. 841, p. 844.

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State vs. Owsley, 17 Mont. 94, 42 Pac. 105.

People vs. Sutter St. Railway Co., 129, Cal. 545, 62 Pac. 104.

Ingraham vs. Merchant's Nat. Bank, 153 Iowa, 408, 132 N. W. 869.

First Nat. Bank vs. Overman, 22 Neb. 116, 34, N. W. 107.

Belts vs. Col. Nat. Bank, 87 Pac. 89.

United States vs. West Texas Cotton Oil Co., Supra.

Under Section 811, Title 28, U.S.C.A. and U. S. Rev. St. 966, interest is not allowed on *every* judgment, but "* * interest shall be allowed on judgments rendered in the Federal Courts *only* when allowed on (that particular kind of) judgments by the laws of the State in which the Court was held * *."

Moran vs. Hagerman, 69 Fed., 427 (aff. 75 Fed. (9 CCA) 97, 59 U.S. 261, 40 L. Ed. 147).

If this rule be strictly applied in this case, interest should not be recovered on the penalties here involved either before or after judgment, because this is the established law of Tennessee.

First National Bank vs. McCleary, Supra.

The Agricultural Adjustment Act nowhere provides for interest, therefore, none is allowable.

The classification of the penalties here sought, as "*a debt* which arises through operation of law", instead of "a true penalty", will be treated in the next assignment.

DISCUSSION OF THE SECOND ERROR ASSIGNED

This presents the issue as to whether the demand is a "debt" by operation of law, or, in reality, a penalty.

The Agricultural Act, itself, Section 348, defines these impositions to be "penalties."

> "Sec. 348, *Penalties*—Any farmer who, while marketing quotas are in effect, markets cotton in excess of the farm marketing quota for the marketing year for the farm on which cotton was produced, shall be *subject to the following penalties*, with respect to the excess so marketed, "* * *:" (7 U.S.C.A. 1348).

Patently, Congress intended to lay *"a true penalty"* on the "excess so marketed."

The amount demanded, and here sued for, 7c and 8c per pound, is approximately 50% of the value of the cotton. This makes intent to punish or deter evident.

Helwig vs. U. S. 188 U. S. 605, 47 Law Ed., 614.

Again, this holding is in direct conflict not only with that of the Fifth Circuit in U.S. vs. West Texas Cotton Oil Co., Supra, to the effect, that the exactions here sought are "* * *in fact and in law* * * *a penalty"*, but also contrary to the holding of the Ninth Circuit in the case of Western Fruit Growers vs. U. S. 124 Fed., (2nd) 381, where on page 387, it is announced:

"The Agricultural Adjustment Act, *in our opinion, is penal in nature*, and, therefore, exclusive jurisdiction is in the Federal Courts to enforce it or to prevent it's violation."

The Lower Court declines to accept the law of Tennessee, as declared in the case of McCleary vs. First Nat. Bank, Supra, on the grounds that there is a marked distinction in the penalties provided by the two statutes, although the distinguishing features are not pointed out.

We respectfully submit, that the subject matter of the two statutes are strikingly similar. The one involved here imposed a penalty for the sale of "excess cotton", the one there construed, imposed a penalty for collecting *excess interest*, in this language:

"The taking, receiving, reserving or charging *a rate of interest* greater than is allowed by the preceding section (that prescribed by state laws), when knowingly done, will be deemed a forfeiture of the entire interest, * *. The person by whom it has been paid or his legal representative, may recover back in an action *in the nature of a debt*, twice the amount of the interest thus paid * *." 5197, U. S. Rev. St. 7 U.S.C.A. Section 86.

If there is here a distinction, it is certainly without a material difference.

The collection of too much interest is no more a transgression of the law, than the marketing of too much cotton. Neither is forbidden, but the doing of either is penalized. It is difficult to see how the two Statutes could be more parallel.

"The term penalty involves the idea of punishment, and it's character is not changed by the mode in which

it is inflicted, whether by *a civil action* of a criminal persecution."

U. S. vs. Chouteau et al, 102 U. S., 603, 26 L. Ed. 246.

Again, neither this case, nor those cited in the opinion below (R. p. 39) as defining away the penal nature of the demand here sought, supports the "debt" theory, or definition attributed. On the contrary, they leave no doubt of its true penal character.

The explanation of the Sixth Circuit herein, justifying its adverse position, on the grounds that the Fifth Circuit failed to take into consideration the "distinction * * between a true penalty and a sanction such as is here involved", is not acceptable. For, that Court was defining identically the same "penalty". It could not have escaped consideration of the full nature of the very thing it was called upon to determine.

It is inconceivable that that Court did not weigh the full purport of its language when it said, the very imposition here involved is "* * *in fact and in law* * * *a penalty.*"

To so hold, is, in effect, to charge that Court with negligence, and this same criticism is just as applicable to the Ninth Circuit, when it says:

"The Agricultural Adjustment Act, *in our opinion is penal in nature* * * ". (Western Fruit Growers vs. U. S., Supra.)

It was impossible for them to have formed an "opinion", without considering its "nature".

Besides, it is to be supposed that Congress used the term "penalties" advisedly.

Undoubtedly the opinion of the lower court in this case is in irreconcilable conflict with that of the Fifth Circuit in the two foregoing particulars, as well as that of the Ninth Circuit.

In addition, being out of harmony with the express provision and intent of the act itself, and the weight of authority.

We further respectfully submit, that the holding in this case to the effect, that these penalties are a mere "debt which arises through operation of law" is also inconsistent with a former opinion of the Sixth Circuit between the same parties, involving exactly the same penalties. Rodgers vs. U. S. 138 Fed. (2nd) 992.

In that case, they held these penalties not to be in the nature of a tax, or for the purpose of revenue, but laid purely as a sanction, that is, a deterrent—punishment—a penalty for, and to prevent, overproduction.

> "Coercion is the very essence of any penalty exacted for failure of submission."
>
> Sunshine Anthracite Coal Co. vs. Adkins, 310 U.S. 381, 401, 84 L. Ed. pp. 12-75.

Hence, if this demand is not a tax, nor exacted for the purpose of revenue, but is imposed to prevent, or punish for, a transgression of law, how can it be said to be a mere "debt" by operation of law. A debt for what? How does the overproduction of cotton injure or damage the Respondent, so as to make her a creditor and the petitioner a debtor?

Helwig vs. U. S., Supra.

We, therefore, urge that even the two opinions of that Honorable Court are out of harmony.

DISCUSSION OF THIRD ERROR ASSIGNED

This Assignment urges that termination or suspension of the cotton quotas—the very essence and sole function of the Act—first, by the Food Administrator, second, by the Secretary of Agriculture, and third, by Joint Resolution of Congress, itself, suspends the right to collect or recover outstanding penalties.

Both lower courts, and Respondent, have apparently confused the suspension of the Statute, as here, with that of an Administrative Order.

There is a pronounced difference.

The supersession of an Administrative Order in no wise affects the Statute.

But, the suspension of the provisions of the Act, itself, terminates its effectiveness, until it is restored, or the suspension expires.

The law is simply rendered inoperative as much so as if repealed for the time being.

> "Where an Act imposing a penalty is suspended, it cannot be enforced during the period of suspension, for penalties previously incurred." (Headnote 3).
>
> "I think suspension has the same effect of a repeal during the period of suspension. * * * It was the same as if it did not exist. The effect of repeal on a penalty incurred before the repealing Act, is to discharge the penalty."
>
> State vs. Banks, 46 S. C. Law (12 Richardson) 609, 616.

The Act, itself, provides for its own termination or suspension:

Sec. 371. (a) "If at any time the Secretary has reason to believe that in the case of corn, wheat, *cotton*, rice, peanuts, or tobacco the operation of farm marketing quotas in effect will cause the amount of such commodity which is free of marketing restrictions to be less than the normal supply for the marketing year for the commodity then current, he shall cause an immediate investigation due notice and opportunity for hearing shall be given to interested persons. If upon the basis of such investigation the Secretary finds the existence of such fact, he shall proclaim the same forthwith. *He shall also in such* proclamation specify such increase in, *or termination of, existing quotas* as he finds, on the basis of such investigation, is necessary to make the amount of such commodity which is free of marketing restrictions equal the normal supply." 7 U.S.C.A. 1371.

The quotas are not prescribed by any administrative order, but by the Act (Sec. 346, 7 U.S.C.A. 1346), and Congress has delegated to the Secretary of Agriculture the power to suspend these, the only activating provisions of the Statute. Sec. 371, Supra.

So, the Lower Court's pronouncement to the effect that, "No such authority has here been withdrawn by the only power competent to withdraw it—the Congress of the United States" (R. p. 38), overlooks the fact that "* * Congress may certainly delegate to others powers which the legislature may rightfully exercise, itself."

Wayman vs. Southard, 10 Wheat, pp. 42 and 43.

That is exactly what has been done here.

The Orders of Termination are not ones superseding an Administrative Order, but of the literal provisions of the law. The fact that Administrative orders, if any, under the Act are also suspended, makes no difference. They are merely incidental.

This Court has held that no relief is available during the suspension of an Act of Congress.

Levey vs. Stocklager, 129 U.S.-470-32 L. Ed. 785, where, on page 787, it is said:

> "The principal question argued at the Bar was as to the effect of the joint resolution in *suspending* the execution of the Prior Act. * * *It suspends the execution of the Act, until the further Order of Congress.* * * *Until Congress should further Order*, the operation of the Act of March 2nd, 1867, was by the joint resolution *effectually suspended.*"

By Section 345 of the Act, 7 U.S.C.A. 1345, the Secretary is empowered to restore the Statutory quotas—not any that he can prescribe—whenever he finds conditions warrant.

> Sec. 345. "Whenever the Secretary determines that the total supply of cotton for any marketing year exceeds by more than 7 per centum the normal supply thereof for such marketing year, the Secretary shall proclaim such fact not later than November 15 of such marketing year * * *and marketing quotas shall be in effect* during the next succeeding marketing year with respect to the marketing of cotton. * * *

Since its beginning, this Court has adhered to the principle, that:

> " * * In case a Statute is repealed or rendered *inoperative, no further proceeding can be had to enforce it,* in pending prosecutions, unless competent authority has kept the statute alive for that purpose."

U. S. vs. Chambers, 291, U. S. 217, 78 L. Ed., page 765.

Yeaton vs. U. S. 5 Cranch, 281, 3 L. Ed., 301.

There is no provision in the Agricultural Adjustment Act preserving the right to enforce penalties after "termination."

If the Act had been repealed, instead of suspended, this would not be true. 1 U.S.C.A., Section 29.

> "The suspension of an Act for a limited time is not a repeal of it."
>
> Brown vs. Barry, 3 Dall. 365, 367, 1 L. Ed. 638.

In the case of U.S. vs. Hark, 320 U.S. 531 88 L. Ed. 222, this Court accepted the holding of the District Court, to the effect, that Section 29, supra, being contrary to the common law, must be strictly construed and limited to *repealed* statutes. The lower court in this case, also recognized this doctrine. R. p. 38.

> "A repeal puts an end to the law. Suspension holds it in abeyance. Brown vs. Barry, 3 Dall. 365."
>
> Heinssen vs. State, 23 Pac. 995, 997, 14 Col. 228.

Of course, as held in State vs. Banks, supra, there can be no collection of a penalty after the repeal or suspension of a Statute.

South Carolina vs. Gaillard, 101 U.S. 433, 438, 25 L. Ed., 937, 939.

In this particular, the lower courts have rested their opinions on three cases, urged by the Government to be conclusive in this matter. They are:

> U. S. vs. Hark, 320, U. S., 531, 88 L. Ed. 222.
>
> U. S. vs. Curtis Wright Export Corporation, 299, U. S., 304, 81 L. Ed. 255.

Bowles, Admr. O P A vs. May Hardwood Co.
(6 C.C.A.), 140 Fed. 2nd, 914.

Not one of these cases is parallel to the one now before this Court.

In the first, Hark vs. U. S., it was contended by Hark that a previous order which he had violated, by charging a higher price, had been rendered ineffectual by a later superseding order designating a different price, thus relieving him of any punishment under the first, notwithstanding his violation.

This Court held this defense not available, because the law, itself, prescribed the offense and punishment; that the administrative regulations only activated and established the criteria prescribed by the Statute. And that instead of Hark having violated only a regulation he had transgressed the law.

In the second, or Curtis-Wright case, identically the same conditions prevail, that is, the President by a second proclamation cancelled a first, which had been made to activate, by certain prerequisites, an Act of Congress prohibiting the exportation of War Materials to South American Countries then engaged in war. This Court held that the exportation by Curtis-Wright of airplanes, was a violation of the Act of Congress, and not of the first proclamation of the President.

In the third, Bowles, etc. vs. May Hardwood Co., the latter was charged with exceeding the price fixed by an administrative order on lumber, which had been increased by a later similar order. The defense was that the later order repealed or nullified the first thus discharging the Company. The Court of Appeals held that the violation was of the Statute and not of the Order.

It will be noted, that in all three instances, it was argued that the violation was of the first administrative order, which had been nullified by the second.

Here, the facts and the contention are entirely different. The suspending orders of the Food Administrator and the Secretary of Agriculture, here relied on, do not apply to former similar orders, but actually suspend the provisions of the Agricultural Adjustment Act, itself, and not Administrative orders. The same is true as to the Joint Resolution of Congress.

Wherefore, petitioner urges the disallowance of interest, the reversal of the Judgment and dismissal of the cause.

Respectfully submitted.

W. CLAY RODGERS,

Petitioner.

No. 58

In the Supreme Court of the United States

OCTOBER TERM, 1947

W. CLAY RODGERS, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF ON BEHALF OF PETITIONER, W. CLAY RODGERS

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Respondent urges two propositions:

First: That the 1938 Agricultural Adjustment Act "set up a program under which equality of dealings among *all* cotton producers was fundamental. * * To adopt petitioner's view would make for inequality." Reply, p 9.

And then reasons from this, that (a) it would be inequitable to relieve petitioner of the payment of interest, because this would be violative of the fundamental principle of equality intended by this statute, and, (b), the established practice of this Court.

Second: That the penalties thereby imposed and here sought to be recovered are "not a true penalty

in the usual sense of that term," because they do not arise by reason of any prohibitive provision of said Act.

FIRST PROPOSITION

Taking up the first phase - (a) "equality":

Clearly this position is untenable by the very terms of the Act, itself. For, by these the nonconformer is onorated with both "forfeitures and penalties", which, obviously, here, is intended to be so burdensome as to be prohibitive, not to equalize.

The "forfeitures" consist of the loss of both, "payments under the Soil Conservation Allotment Act, • • and loans from the Commodity Credit Corporation • •." Reply, pp 4 and 5. (Sec. 1302 (c) and 1349, 7 USCA).

While the "penalty" exacted amounts, in reality, to about half the worth of the cotton—" • • 50 percentum of the loan for cooperators • •". Reply p 32 (7 USCA Supp. V, 1330 (a)).

So, instead of equalizing the two classes of producers — the cooperators with non-cooperators — as contended by Respondent, these provisions actually annihilate the non-cooperator, — and this, by the clear intent of Congress to penalize him to such an extent that he cannot operate.

To say this is not a "penalty" in the true sense of the word is to contravene common sense and good reason.

Therefore, we are forced to the conclusion, that we are here dealing with two subjects that are not only not favored, but on which interest is never allowed — "forfeitures and penalties", either before or after judgment. Orig. Pet., pp 6 and 7. (Petitioner begs

permission to omit a relisting of the authorities there cited, for the sake of brevity).

This also clearly demonstrates that there is no process or principle of equalization involved.

While both lower Courts, the Sixth and Fifth Circuits, concur in holding that interest is applicable after judgment, this is not conceded to be sound, where, as in this case, "forfeitures and penalties" are involved.

It is patent that both those Courts, as well as the Trial Court, assumed this to follow as a matter of course, under Sec. 811, 28 USCA, but this principle is seriously questioned, in fact, the cases cited (Orig. Pet., pp 6 and 7), expressly hold to the contrary.

And since Respondent takes the position that Sec. 811, Supra, "is entirely inapplicable," (Reply, p 10, Note) petitioner is clearly entitled to relief from interest even on the judgment.

This is especially true by reason of the fact, that Sec. 811 applies only to "judgments in civil causes."

In this connection, we call attention to Respondent's inconsistency in urging that it is entitled to six percent interest on the judgment, patently rested on State law, notwithstanding its contention that "the question of whether the United States is entitled to interest on the sums thus recoverable under the Act is entirely a matter of Federal, not local, law," (Reply, p 10), while there is no Federal Statute fixing the rate of interest, save and except Section 811, which provides interest only on "judgments in civil causes," not on those for a penalty, as here, necessarily as punishment.

Hence, thus reasoning, all interest should be eliminated.

Certainly, the Tennessee law, which Section 811 re-

quires shall be applied, if any at all, forbids the charge of any interest, either before or after judgment on penalties.

McCleary V. First National Bank, 109 Tenn. (1 Cates) p 142.

Moreover, this Court having repeatedly announced, that interest is purely a creature of statute,

> "Congress by enumerating the sums recoverable * * meant to preclude recovery of interest * *" Brooklyn Savings Bank V. O'Neil, 324 US 697, 716, 89, L. Ed. 1296, 1314.

Once more, unmistakably, to add interest to a penalty, is to increase the penalty, to that extent, beyond that fixed by law.

The next phase of this Proposition is, in simple language, that it is inequitable to allow petitioner to escape interest on "a sum certain." Reply, pp 8 and 9.

In the first place, the penalties sued for, in the original complaint involved numerous items, requiring extensive and complicated accounting, but the parties, in order to avoid this process, by long drawn out proof, reached an agreement and stipulated the total amount of the penalties involved. Record, pp 18 to 22. This is, therefore, not that class of liquidated amounts, on which, the cases cited by Respondent hold that Courts of Equity will sometimes allow interest, as a matter of right. The authorities cited in support apply wholly to cases where there is no controversy as to and the amount is fixed to start with, and, which, are purely civil and not criminal in nature.

SECOND PROPOSITION

In this regard, Respondent contends that the penalty here imposed is "not a true penalty in the usual sense of that term."

In addition to the treatise of this subject already submitted in petitioner's Original Petition (pp 8 to 11), we urge that this proposition has already been disposed of by this Court, contrary to Respondent's contention, in at least two of the more recent cases now urged upon the Court. These being Mulford V. Smith, 307 US 38, 83 L. Ed. 1092 and Wickard V. Filburn 317 US 111, 87 L. Ed. 122, in the latter of which, this Court expressly holds:

> "The stimulation of commerce is a use of the regulatory function *quite as definitely as prohibitions* or *restrictions* thereon."

In other words, any act of Congress which definitely evinces a disposition to forbid certain acts or conduct, is as mandatory as if expressly prohibited. That is, Congress does not have to say "Thou shalt not" or "It shall be unlawful" in order to impose a restriction and/or a penalty. The phraseology adopted is neither important nor controling, so long as the language used is a clear and definite restriction.

Respondent's efforts to compare the penalty here exacted with taxes, tariffs, excises and other forms of revenue levied by Congress, and to judgments for the recovery of money by reason of a breach of contract or transgression of personal rights, are wholly foreign to a judgment for penalties imposed for the purpose of a prohibition or a deterrent.

Such an exaction is clearly not "a debt which arises through operation of law," as held by the Lower Court. R., p 40.

All of Respondent's citations plainly fall under these classifications.

Respondent urges with great vigor, that this action to recover penalties should be likened to suits to recover taxes, revenues, and other stat tory demands, and cite a large number of cases of this nature in support of this contention. Cases of this purport have no characteristics common to either civil or criminal suits for penalties. This Court, in the case of Mulford V. Smith, 307, p 46, 83 L. Ed. p 1098, expressly holds that remedies applicable to tax cases do not apply to the subject matter of this cause.

Certainly, one of the tests of a true penalty is that laid down by this Court in the case of Helwig V. United States, 188 US, 605, 47 L. Ed. 614, where it is said, that when the imposition amounts to a substantial part of the actual value of the commodity involved, and not merely an amount laid for revenue or reasonable regulati n, it becomes a penalty for the purpose of prohibition.

This criterion is equally as emphatically set up in Sunshine Anthracite Coal Company V. Adkins 310 US 381, 401, 84 L. Ed., pp 12, 75.

It matters not that a civil suit is adopted to enforce this. It still retains its punitive or criminal nature.

U. S. V. Chonteau et al, 102 US, 603, 26 L. Ed. 246.

And, in conclusion, while petitioner does not want to be in the attitude of trying to argue with the Most High Court a matter already passed upon—his third proposition—non-enforceability of a suspended Act, during its suspension—he begs leave to call attention to the publicly announced or commonly known interim developments of a clear intention on the part of Congress to abandon both the policy of and the 1938 Agri-

cultural Adjustment Act, and to adopt in their place and stead those diametrically opposed thereto. That is, as now urged by the Department of Agriculture in lieu of a planned restricted production or scarcity, as contemplated by the 1938 Act, there be substituted a program of greatly increased production and an ever ready surplus, as expressly called for by the present Secretary of Agriculture, and significantly indicated for acceptance by the public hearings now being held throughout the country by a properly designated Congressional Committee, headed by Congressman Clifford Hope, for the very purpose of formulating legislation that will accomplish these desired results.

For these reasons the petitioner feels justified in most respectfully suggesting that this proposition be reconsidered.

Respectfully submitted,

W. Clay Rodgers
Petitioner

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No. 1176 58

In the Supreme Court of the United States

OCTOBER TERM, 1946

W. CLAY RODGERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

No opinion was rendered by the district court. The opinion of the United States Circuit Court of Appeals for the Sixth Circuit (R. 36–41) is reported at 158 F. 2d 835.

JURISDICTION

The judgment of the court below was entered on January 13, 1947 (R. 35). The petition for a writ of certiorari was filed March 28, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. 347).

QUESTIONS PRESENTED

1. Whether interest on penalties, incurred as the result of marketing cotton in excess of farm marketing quotas, may be recovered for the period between the date such penalties became due and payable and the date judgment is entered.

2. Whether penalties, incurred by marketing cotton in excess of quotas then in effect, are recoverable after marketing quotas for subsequent years have been suspended or terminated.

STATUTE AND ADMINISTRATIVE REGULATIONS INVOLVED

The pertinent provisions of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. 1281 *et seq.*) and *of regulations issued thereunder* by the Secretary of Agriculture are set forth in the Appendix, *infra*, pp. 9–16.

STATEMENT

Farm marketing quotas for cotton were proclaimed by the Secretary in the manner required by the Act and were in effect in the marketing years 1940–41, 1941–42, and 1942–43. Farm acreage allotments were established for certain farms belonging to petitioner for the crop years 1940, 1941, and 1942, and upon the basis of such acreage allotments his farm marketing quotas were determined for the corresponding marketing years (1940–41, 1941–42, 1942–43). Petitioner planted cotton on each farm in excess of his acreage allotment, and marketed cotton in excess

of the established farm marketing quotas during each marketing year and while such quotas were in effect. Thereafter, because of a national emergency, the War Food Administrator[1] issued proclamations terminating marekting quotas for the 1943–44 marketing year and announcing also that quotas would not be in effect in the 1944–45 marketing year (R. 19–21).[2]

On August 10, 1945, the respondent brought this action to recover the marketing quota penalties incurred by petitioner during the marketing years 1940–41, 1941–42, and 1942–43, with interest thereon from the date such penalties became due and payable (R. 1–8). Petitioner's motion to dismiss on the grounds that the penalties sued for had been suspended by orders of the War Food Administrator was denied (R. 9, 15). The answer of petitioner denied liability on the ground that the penalties were not enforceable because of the suspension orders (R. 16–17), and the facts were stipulated (R. 18–22).

On March 4, 1946, the United States District Court for the Western District of Tennessee

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[1] The administration of the marketing quota provisions of the Act was transferred from the Secretary of Agriculture to the War Food Administration by Executive Orders 9322 and 9334 (8 F. R. 3807, 5423).

[2] Quotas have not been in effect for any marketing year since 1944–45 and on July 24, 1946, Congress provided that quotas should not be established for the 1947 crop because of a shortage of fats and oils and protein feeds (Public Law 544, 79th Cong., 2d Sess).

entered judgment against petitioner for penalties in the amount of $7,039.52, plus $1,682.46 interest (R. 22–24). The Circuit Court of Appeals affirmed the judgment (R. 35).

I

REASONS FOR NOT OPPOSING THE GRANT OF THE WRIT ON THE QUESTION OF INTEREST

One aspect of the holding of the court below is in conflict with *United States* v. *West Texas Cottonoil Co.*, 155 F. 2d 463 (C. C. A. 5) which, like the present case, involved an action to recover penalties for the marketing of cotton in excess of farm marketing quotas. In that case the court held that interest before judgment is not recoverable on penalties prescribed by the Act because the statute did not specifically so provide. Both courts permitted recovery of interest on the judgment and the present petitioner has limited his request for review of the interest issue to that recoverable before judgment (Pet. 3, 5).

The Government believes that the decision below allowing interest is in accordance with law because the so-called penalty is not a true penalty but a statutory obligation in the nature of a debt. In the *West Texas Cottonoil Co.* case the question of interest on the "penalty" obligation did not arise in the district court and it arose only incidentally on appeal. There the United States as appellant sought reversal of the district court's judgment denying recovery of penalties im-

posed upon the sale of excess cotton to the government of France. The question involving interest was not fully presented in written or oral argument[3] and the Circuit Court of Appeals, without discussion of the nature and purpose of the exaction, concluded that it was a penalty in the ordinary sense. On the other hand, in the instant case the question was squarely presented and the opinion of the court below reflects careful analysis of the purpose of the Act and the nature of the statutory obligation referred to as a penalty. Its decision that the statutory obligation is not a penalty in the ordinary sense is supported by the reasoning of the Circuit Court of Appeals for the Fourth Circuit in *Usher* v. *United States*, 146 F. 2d 369.

The conflicting rules in the Fifth and Sixth Circuits in regard to liability for interest before judgment make uniform enforcement of the Act impossible. The problem recurs frequently enough to make it highly desirable, from the standpoint of proper administration, that this Court resolve the existing conflict.[4] Therefore,

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[3] The question was presented by a petition for rehearing filed by the Government and denied by the Circuit Court of Appeals. *United States* v. *West Texas Cottonoil Co.*, 155 F. 2d 463.

[4] The Acting Solicitor General has been advised that enforcement proceedings of the type here involved are now pending or are in the process of institution against twenty-three producers. In three instances the claims for interest before judgment will probably be denied because of the present rule in the Fifth Circuit. In four instances the question

the Government does not oppose the granting of the writ on this question.

II.

REASONS FOR DENYING WRIT ON QUESTION OF RIGHT TO RECOVER PENALTIES

Petitioner contends (Pet. 12–17) that the penalties incurred during the marketing years in question are not collectible because of the action of the War Food Administrator in terminating marketing quotas for the marketing year 1943–44 in view of a national emergency. He asserts that such action suspended the Act and terminated its effectiveness, and invokes the common law rule that in the absence of a saving clause penalties and offenses prescribed by statute expire upon the repeal of the statute. The rule upon which petitioner relies has been abrogated by statute (1 U. S. C. 29; *Great Northern Ry. Co.* v. *United States*, 208 U. S. 452) but if the rule were operative the circumstances here would not present a case for its application.

The Act authorizes the Secretary of Agriculture to establish marketing quotas for cotton on the basis of definite standards, which quotas shall be in effect during a specific marketing year. He is authorized to increase or terminate such quotas when he finds it necessary to do so in order (1) to make the amount of the commodity which is free of marketing restrictions equal to normal

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will arise in courts within the Sixth Circuit and they will presumably regard the case at bar as controlling.

supply, or (2) to meet a national emergency or increase in export demand (Act, Sec. 371; as amended; 7 U. S. C., Supp. V, 1371). During any years in which marketing quotas are not effective, the provisions of the Act lie dormant but the Act itself and all provisions thereof may be invoked by the Secretary whenever he determines the emergency is over and he finds that the supply of cotton exceeds the normal supply by more than seven per cent for such year. The Act has not expired by its own terms nor has it been suspended or repealed by Act of Congress. The statute, not the proclamation of the Secretary establishing quotas or the regulations implementing the Act, imposes the liability on the producer or buyer with respect to cotton marketed in excess of the producer's marketing quota (Act, Secs. 345, 348, as amended, 372; 7 U. S. C. 1345, 1348, 1330 (9); 1372).

This Court has considered the precise point presented here in two recent cases involving similar circumstances and has held that the suspension or termination of a regulation by an administrative body does not foreclose the right to invoke sanctions prescribed by statute for violations of the regulation occurring before its suspension or termination. *United States* v. *Hark*, 320 U. S. 531; *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304. See also *Utah Junk Co.* v. *Porter*, 328 U. S. 39.

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In the instant case the Secretary terminated marketing quotas, previously proclaimed by him, pursuant to authority conferred by Congress. His action neither suspended nor terminated the Act; Congress alone had those powers. The decision of the Circuit Court of Appeals upon this point was correct and there is no substantial question for review. It is therefore urged that review of this question be denied.

CONCLUSION

For the reasons stated, the Government does not oppose the grant of a writ of certiorari to review the judgment of the court below upon the limited question of the right to recover interest upon marketing penalties prior to judgment, but it respectfully submits that the writ should be otherwise denied.

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APRIL 1947.

APPENDIX

The pertinent provisions of the Agricultural Adjustment Act of 1938, 52 Stat. 31, as amended (7 U. S. C. 1281 et seq.), are as follows:

SEC. 345. *Marketing Quotas.* Whenever the Secretary determines that the total supply of cotton for any marketing year exceeds by more than 7 per centum the normal supply thereof for such marketing year, the Secretary shall proclaim such fact not later than November 15 of such marketing year (or, in case of the marketing year 1937–1938, within ten days after the date of enactment of this Act), and marketing quotas shall be in effect during the next succeeding marketing year with respect to the marketing of cotton. Cotton produced in the calendar year in which such marketing year begins shall be subject to the quotas in effect for such marketing year notwithstanding that it may be marketed prior to August 1. (7 U. S. C. 1345).

SEC. 348. *Penalties.* Any farmer who, while marketing quotas are in effect, markets cotton in excess of the farm marketing quota for the marketing year for the farm on which such cotton was produced, shall be subject to the following penalties with respect to the excess so marketed: 2 cents per pound if marketed during the first marketing year when farm marketing quotas are in effect; and 3 cents per pound if marketed during any subsequent year, except that the penalty shall be 2 cents per pound if cotton of the crop subject to penalty in the first year is

marketed subject to penalty in any subsequent year. (7 U. S. C. 1348).

SEC. 371. (a) If at any time the Secretary has reason to believe that in the case of corn, wheat, cotton, rice, peanuts, or tobacco the operation of farm marketing quotas in effect will cause the amount of such commodity which is free of marketing restrictions to be less than the normal supply for the marketing year for the commodity then current, he shall cause an immediate investigation to be made with respect thereto. In the course of such investigation due notice and opportunity for hearing shall be given to interested persons. If upon the basis of such investigation the Secretary finds the existence of such fact, he shall proclaim the same forthwith. He shall also in such proclamation specify such increase in, or termination of, existing quotas as he finds, on the basis of such investigation, is necessary to make the amount of such commodity which is free of marketing restrictions equal the normal supply.

(b) If the Secretary has reason to believe that, because of a national emergency or because of a material increase in export demand, any national marketing quota for corn, wheat, cotton, rice, peanuts, or tobacco should be increased or terminated, he shall cause an immediate investigation to be made to determine whether the increase or termination is necessary in order to effectuate the declared policy of this Act or to meet such emergency or increase in export demand. If, on the basis of such investigation, the Secretary finds that such increase or termination is necessary, he shall immediately proclaim such finding (and if he finds an increase is neces-

sary, the amount of the increase found by him to be necessary) and thereupon such quota shall be increased, or shall terminate, as the case may be. (7 U. S. C., Supp. V, 1371).

SEC. 372. (a) The penalty with respect to the marketing, by sale, of wheat, cotton, or rice, if the sale is to any person within the United States, shall be collected by the buyer.

(b) All penalties provided for in Subtitle B shall be collected and paid in such manner, at such times, and under such conditions as the Secretary may by regulations prescribe. Such penalties shall be remitted to the Secretary by the person liable for the penalty, except that if any other person is liable for the collection of the penalty, such other person shall remit the penalty. The amount of such penalties shall be covered into the general fund of the Treasury of the United States. (7 U. S. C. 1372).

SEC. 375. (a) The Secretary shall provide by regulations for the identification, wherever necessary, of corn, wheat, cotton, rice, peanuts, or tobacco so as to afford aid in discovering and identifying such amounts of the commodities as are subject to and such amounts thereof as are not subject to marketing restrictions in effect under this title.

(b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this title. (7 U. S. C., Supp. V, 1375).

The pertinent provisions of the Act of May 26, 1941, 55 Stat. 203, 205, are as follows:

Notwithstanding the provisions of the Agricultural Adjustment Act of 1938, as

amended (hereinafter referred to as the Act)—

* * * * *

(9) The marketing penalty for cotton and rice produced in the calendar year in which any marketing year begins (if beginning with or after the 1941–1942 marketing year) shall be at a rate equal to 50 per centum of the basic rate of the loan for cooperators for such marketing year under section 302 of the Act and this resolution. (7 U. S. C., Supp. V, 1330 (9)).

With respect to the collection and payment of penalties, the regulations of the Secretary are substantially identical for the crop years 1940–41, 1941–42, and 1942–43. The regulations for the crop year 1942–43 provide:

SEC. 722.440. *Payment and Collection of Penalties.* (a) *Time when penalties become due.* The penalty shall be due at the time the cotton is marketed by sale, barter, exchange, or gift *inter vivos.* Cotton shall be deemed to be sold when either title to or actual or constructive possession of the cotton is delivered by or on behalf of the producer or any part of the purchase price is paid. Cotton shall be deemed to have been marketed by barter or exchange when it is delivered to the transferee of the cotton by actual or constructive delivery or the transferer has received any part of the property, goods, or services for which the cotton is being bartered or exchanged. Cotton shall be deemed to have been marketed by gift *inter vivos* when there is an actual or constructive delivery of the cotton to the transferee during the lifetime of the producer. Cotton shall be deemed to have been mar-

keted in processed form when the producer, or some person on his behalf, converts cotton into an article of trade and thereby causes the cotton to lose its identity as seed cotton or lint cotton. An article of trade within the meaning of this provision is any article made in whole or in part from cotton for the purpose of marketing such article.

(b) *Persons liable for collection and payment of penalties.* The penalty in connection with the marketing of cotton by sale to any person within the United States shall be collected by the buyer at the time of sale. The penalty in connection with the marketing of cotton by sale to any person not within the United States or by barter or exchange or gift *inter vivos* shall be paid by the producer. In the case of a barter or exchange or gift *inter vivos*, the penalty may be collected by the person to whom such cotton is transferred, if the producer and the transferee of such cotton agree, as evidenced by the form Cotton 613 covering the transaction, that the penalty shall be collected by the transferee as in the case of the marketing of cotton by sale to any person within the United States. The penalty, if any, due in connection with the marketing of any cotton produced on any farm for which a white marketing card is issued shall not be collected by the buyer or transferee of such cotton but shall be paid by the producer. The penalty, if any, due upon cotton marketed in processed form within the meaning of paragraph (a) shall be paid by the producer or, if the producer and the buyer or transferee agree, the buyer or transferee of the article of

trade into which the cotton was converted may collect and remit the penalty.

(c) *Payment of a penalty prior to the marketing of cotton.* Any penalty which would be incurred by any producer upon the marketing of cotton may be paid prior to the time such cotton is marketed, and the treasurer of the county committee for the county in which such cotton was produced shall receive the penalty as in the case of other penalties.

(d) *Manner of collection.* The penalty may be collected by the buyer by receiving the amount thereof from the producer or by deducting from the purchase price of the cotton the amount of the penalty due with respect to the marketing thereof. The penalty may be collected by the transferee by receiving the amount thereof from the producer.

(e) *Issuance of receipts for penalties collected.* Any buyer or transferee of cotton who, as provided for in paragraph (b), collects the penalty with respect to the marketing of cotton shall issue a receipt to the producer from whom the penalty is collected. (7 F. R. 4369; 1940–41 marketing year, Sec. 722.243, 5 F. R. 1894; 1941-42 marketing year, Sec. 722.343, 6 F. R. 972).

SEC. 722.441. *Remittance of Penalties to the Treasurer of the County Committee.* (a) *Time of remittance.* The penalty shall be remitted not later than 15 calendar days next succeeding the day on which the cotton was marketed by the producer. For and on behalf of the Secretary of Agriculture, the treasurer of the county committee for the county in which the farm on which the cotton was produced is located, or the treasurer of the county committee to whom the

report in connection with cotton marketed without the use of the means of identification prescribed by these regulations is made, shall receive the penalty and issue to the person remitting the penalty a receipt therefor on form Cotton 419 or form Cotton 419–A.

(b) *Form of remittance.* The penalty shall be remitted only in legal tender or by draft, check, or money order drawn payable to the order of the Treasurer of the United States. All checks, drafts, or money orders tendered in payment of the penalty shall be received by the treasurer of the county committee subject to collection and payment at par, and any receipt issued in connection therewith as provided for in paragraph (a) shall bear a notation to that effect and a description of the check, draft, or money order. (7 F. R. 4369; 1940–41 marketing year, Sec. 722.244, 5 F. R. 1894; 1941–42 marketing year, Sec. 722.344, 6 F. R. 972.)

SEC. 722.453. (c) *Payment of penalty.* The penalty shall be due at the time cotton is marketed in excess of the farm or producer marketing quota and shall be remitted to the treasurer of the county committee, as otherwise provided in these regulations, at the time the farm operator's report on form Cotton 417 for the farm is required to be submitted, as provided in Sec. 722.450 (d), and no extension or qualification of the time for paying the penalty shall be made or allowed by an officer or employee of the United States Department of Agriculture, member of a county committee, other local committee, or State committee, county agent, or officer or employee of such committee or of the county

agent's office. If funds are held in escrow to secure payment of the penalty, the penalty shall be paid by the use of such funds. Any part of the funds held in escrow in excess of the penalty incurred during the marketing year shall be returned to the person depositing them, in accordance with Sec. 722.442. In the event the principal sum of the bond or the amount of funds deposited in escrow is not sufficient to cover the amount of penalties incurred in respect to the farm, the owner or operator of the farm who gave the bond or deposited the funds in escrow shall be liable for and shall pay a sufficient additional amount to cover the amount of such penalties. Nothing contained in this paragraph shall discharge the other producers on the farm from liability to pay the penalties incurred by them. (7 F. R. 4374; 1940–41 marketing year, Sec. 722.256 (e), 5 F. R. 1900; 1941–42 marketing year, Sec. 722.356 (e), 6 F. R. 978).

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No. 58

In the Supreme Court of the United States

OCTOBER TERM, 1947

W. CLAY RODGERS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The district court did not render an opinion. The opinion of the circuit court of appeals (R. 36–41) is reported in 158 F. 2d 835.

JURISDICTION

The judgment of the court below was entered on January 13, 1947 (R. 35). The petition for a writ of certiorari was filed on March 28, 1947, and was granted on May 5, 1947, but "limited to the first two questions presented by the petition for the writ" (R. 42). The jurisdiction of this Court rests on Section 240 (a) of the Judicial

Code as amended by the Act of February 13, 1925 (28 U. S. C. 347).

QUESTIONS PRESENTED

The first two questions, as phrased in the petition for a writ of certiorari, are: "(1) Should interest on penalties be allowed prior to judgment? and (2) Are the exactions here imposed, in reality, penalties, or a mere debt?"

The two questions may be restated as presenting the single question whether interest on "penalties," incurred as the result of marketing cotton in excess of farm marketing quotas fixed pursuant to the Agricultural Adjustment Act of 1938, as amended, is recoverable for the period between the date such "penalties" became due and payable and the date judgment is entered.

STATUTE AND ADMINISTRATIVE REGULATIONS INVOLVED

The pertinent provisions of the Agricultural Adjustment Act of 1938, c. 30, 52 Stat. 31, as amended (7 U. S. C. 1281, *et seq.*) and of the regulations issued thereunder by the Secretary of Agriculture are set forth in the Appendix, *infra*, pp. 30–36.

The Act was designed to assure orderly marketing conditions for certain agricultural products, including cotton, and to provide an adequate and balanced flow of such commodities by leveling out the recurring surpluses and shortages

which had been found to exist.[1] The plan adopted to achieve the desired goals in respect of cotton is similar to that adopted for tobacco, which was before this Court in *Mulford* v. *Smith*, 307 U. S. 38, and that for wheat, which this Court considered in *Wickard* v. *Filburn*, 317 U. S. 111.

To carry out the purposes of the Act, the Secretary of Agriculture is required, not later than November 15 of each year, to determine the total supply, the normal supply, and the carry-over of cotton as of August 1 of such year. He must also determine the probable domestic consumption and estimated exports and carry-over for the ensuing marketing year, and, if he finds that the total supply for the marketing year exceeds by more than 7 per centum the normal supply for such year, he is required to place in effect marketing quotas for the ensuing marketing year unless disapproved in a referendum by more than one-third of those engaged in producing cotton in the preceding year.

Elaborate and specific standards for determining farm marketing quotas are provided by the Act, pursuant to which the Secretary apportions the national baleage allotment of cotton to

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[1] The Act's declaration of policy is set forth in Section 2 (7 U. S. C. 1282). Reports of Congressional Committees on the bill which eventuated in the Act state the purposes of the Act in similar language. S. Rep. No. 1295, H. Rep. No. 1645, 75th Cong., 2d sess.; H. Rep. No. 1767, 75th Cong., 3d sess.

cotton-producing States and then converts the State baleage allotment into acres and apportions it to counties and farms with the aid of local committees of cotton producers. Upon the basis of its farm acreage allotment, the farm marketing quota for a particular farm is computed as a number of bales equal to the normal or actual production, whichever is greater, of the allotted acreage plus that portion of any previous crop which could have been marketed without penalty.

The Act does not prohibit the marketing[2] of cotton by any given producer in excess of the quota established for his farm but, rather, requires such a producer to pay an amount per pound thereon prescribed by the Act. The individual producer is thus free to determine whether to produce and market only so much cotton as is permitted by his farm marketing quota or whether to produce and market cotton in an unlimited amount but subject to the prescribed "penalties" in respect of cotton marketed in excess of his quota. Producers who elect to produce and market cotton in accordance with their established quotas are alone eligible to receive payments under the Soil Conservation and

[2] Marketing is defined by the Act to mean "to dispose of, in raw or processed form, by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos." Sec. 301 (b) (6) (A), (B), as amended, 7 U. S. C. 1301 (b) (6) (A), (B).

Domestic Allotment Act, and may receive loans from the Commodity Credit Corporation in amounts greater than are accorded those who elect to produce and market cotton in excess of their established quotas.[3]

With respect to excess cotton marketed while quotas were in effect, the Act prescribed a "penalty" of 3 cents a pound for the 1940–41 marketing year, and a "penalty" at the rate of 50 per centum of the basic rate of the loan for cooperators for any marketing years thereafter.[4] All "penalties" which may accrue are required to be paid to the Secretary of Agriculture under such conditions as he may by regulation prescribe and must be covered by him into the general fund of the Treasury of the United States (Sec. 372, *infra*, p. 31).

The "penalty" with respect to the marketing of cotton to any person in the United States must be collected by the buyer, and the regulations of the Secretary make provision both for the compulsory collection of "penalties" by buyers and

[3] Secs. 302 (c), 349, 7 U. S. C. 1302 (c), 1349.

[4] Section 348, supplemented by the Act of May 26, 1941, Appendix, *infra*, pp. 30–31, 31–32. The "penalty" on this basis amounted to 7 cents per pound for the 1941–42 marketing year, and 8 cents per pound for the 1942–43 marketing year. The administrative regulations covering the amounts of the "penalty" for the three years are: for 1940–41, Sec. 722.242 (5 F. R. 1894); for 1941–42, Sec. 722.342 (6 F. R. 971, 1998, 3935); and for 1942–43, Sec. 722.439 (7 F. R. 4368, 4753).

for the voluntary collection by other transferees.[5] The producer, however, remains liable for the payment of any "penalty" arising out of the marketing of above-quota cotton if it is not collected by the buyer or transferee (Sec. 348, Appendix, *infra*, pp. 30–31). The producer may make prepayment of "penalties" he expects to incur or, under prescribed conditions, may deposit the amount of the penalty in escrow or give a bond to secure the same.[6] "Penalties" erroneously collected may be refunded to the person who bore the burden of the payment.[7] "Penalties" become due at the time above-quota cotton is marketed and must be remitted not later than 15 days from the day succeeding the day the cotton is marketed by the producer, if collected by the buyer, and at the time the producer files the farm operator's report otherwise required by the regulations, if they are remitted by the producer.[8]

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[5] Section 372 (a), *infra*, p. 31. The administrative regulations for the three marketing years in question are, respectively, Sec. 722.243 (5 F. R. 1894), Sec. 722.343 (6 F. R. 972), and Sec. 722.440 (7 F. R. 4369).

[6] Administrative regulations (1940–41), Secs. 722.243, 722.256 (5 F. R. 1894, 1899–1900); (1941–42) Secs. 722.343, 722.356 (6 F. R. 972, 977–978); (1942–43) Secs. 722.440, 722.453 (7 F. R. 4369, 4374).

[7] Section 372 (c), 7 U. S. C. 1372 (c).

[8] A farm operator's report is required from each producer not later than 15 days after all cotton on the farm is marketed, or not later than March 1 of the marketing year, whichever is the earlier, but in the event that all cotton on the farm is not marketed prior to March 1, a supplemental report is required within 15 days after it is marketed or not

STATEMENT

In August 1945, the United States filed its complaint against petitioner in the United States District Court for the Western District of Tennessee, seeking to collect "penalties" incurred by him under the cotton marketing quota provisions of the Agricultural Adjustment Act, plus interest from the time such penalties became due and payable (R. 2–8). After the parties had entered into a written stipulation of facts, the district court gave judgment for the United States in the amount of the penalties incurred, with interest upon each penalty from the date it became due and payable to the date of judgment (R. 22–24). On appeal from this judgment, it was affirmed by the court below (R. 35).

Farm acreage allotments for cotton were established for petitioner's farm in Chicot County, Arkansas, for the crop year 1940, and for his farms in Tunica County, Mississippi, for the crop years 1941 and 1942, and, upon the basis of such acreage allotments, his farm marketing quotas were determined for the corresponding marketing years. Petitioner planted cotton on each farm substantially in excess of his acreage allotments, and marketed cotton from each farm in excess of the

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later than the first day of the following marketing year (August 1), whichever is earlier. Administrative Regulations, (1940–41) Sec. 722.252 (d) (5 F. R. 1899); (1941–42) Sec. 722.353 (d) (6 F. R. 977); and (1942–43) Sec. 722.450 (d) (7 F. R. 4373).

established farm marketing quotas during each marketing year (1940–41, 1941–42, and 1942–43) and while such quotas were in effect (R. 18–21).

The petitioner's principal contention in both courts below was that termination by the War Food Administrator of marketing quotas for the 1943–44 marketing year and his announcement that quotas would not be in effect in the 1944–45 marketing year operated to suspend the obligation to pay "penalties" for prior years.* This contention was rejected by both courts below and it is not before the Court under the limited writ of certiorari which was granted (R. 42). The sole question presented for determination is whether the courts below correctly determined that simple interest should be added to petitioner's obligations at the rate of 6% per annum from the dates the respective "penalties" became due until the date of judgment in favor of the United States.

SUMMARY OF ARGUMENT

I

The federal courts have always adhered to the principle that where payment of a sum certain is

*The administration of the marketing quota provisions of the Act was transferred from the Secretary of Agriculture to the War Food Administration by Executive Orders 9322 and 9334 (8 F. R. 3807, 5423).

Quotas have not been in effect for any marketing year since 1944–45, and, on July 24, 1946, Congress provided that quotas should not be established for the 1947 crop because of a shortage of fats and oils and protein feeds (Joint Res. July 24, 1946, c. 616, 60 Stat. 662).

owing and is unjustifiably withheld, interest may properly be awarded as an appropriate measure of damages for the withholding. This principle is applied where payment is owing as a result of an obligation imposed by statute though the statute makes no express provision for the payment of interest. Application of this general principle is particularly appropriate in the present case in view of the general scheme and objectives of the Agricultural Adjustment Act of 1938. That Act set up a program under which equality of dealing among all cotton producers was fundamental. That equality could be attained only if those who chose to produce and market beyond-quota cotton paid equal and not varying sums in consequence. To adopt petitioner's view would make for inequality.

II

We have been unable to discover any general "rule of law" which forbids an award of interest when payment of a "penalty" imposed by statute is delayed. But even if there were such a rule, it could not aid the petitioner. While the obligation here imposed on petitioner is denominated by the Act as a "penalty", it is not a true penalty in the usual sense of that term. It is not punitive in nature and the course of conduct which gives rise to the obligation is not forbidden. Congress was deliberate in its decision that above-quota marketing should not be banned. One circumstance indicating that the obligation which is

imposed on such marketing nevertheless leaves the cotton producer free to elect what action he will take is that the obligation may be prepaid.

ARGUMENT

I

THE UNITED STATES IS ENTITLED TO INTEREST ON "PENALTIES" PRESCRIBED BY THE AGRICULTURAL ADJUSTMENT ACT OF 1938 FOR MARKETING IN EXCESS OF QUOTAS, FROM THE DATE SUCH "PENALTIES" ACCRUE

The liability of the petitioner to pay to the United States "penalties" for marketing cotton in excess of marketing quotas, arises solely out of the Agricultural Adjustment Act of 1938. The question of whether the United States is entitled to interest on the sums thus recoverable under that Act is entirely a matter of federal, not local, law. *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697, 715. Where, as here, the applicable federal statute is silent as to interest, that question is not controlled by state statute or local common law; rather, "it is for the federal courts to determine, according to their own criteria, the appropriate measure of damage, expressed in terms of interest, for non-payment of the amount found to be due. *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, 296.[10]

[10] There is no general federal statute relating to interest before judgment on sums due to the United States. 28 U. S. C. 811, which relates only to interest on judgments, is entirely inapplicable.

This Court has repeatedly emphasized that the determination whether interest should be allowed under given circumstances is to be made "from the point of view of reason and justice even though no express statute existed for compelling this payment." *Billings* v. *United States,* 232 U. S. 261, 286. The allowance or denial of interest does not flow from the application of rigid rules but results from the flexible considerations of equity and fairness. *Board of Commissioners* v. *United States,* 308 U. S. 343, 350, 352. "If a debt ought to be paid at a particular time, and is not, owing to the default of the debtor, the creditor is entitled to interest from that time by way of compensation for the delay in payment." *Young* v. *Godbe,* 15 Wall. 562, 565.[11] "Otherwise there would be no motive to pay promptly, and no equality between those who should pay then [when the sum first becomes due] and those who should pay at the end of a protracted litigation." *Casey* v. *Galli,* 94 U. S. 673, 677–678.

The application of these principles has given

[11] As this Court has said, he "who has had the use of money owing to another justly may be required to pay interest from the time the payment should have been made." *Miller* v. *Robertson,* 266 U. S. 243, 257–258. For under such circumstances it is "no hardship" to require interest. *Crescent Mining Co.* v. *Wasatch Mining Co.,* 151 U. S. 317, 323. The allowance of interest, when not stipulated for by contract or authorized by statute, is justified "as damages for the detention of money or of property, or of compensation, to which the plaintiff is entitled." *United States* v. *North Carolina,* 136 U. S. 211, 216.

content to their statement. In *Casey* v. *Galli, supra,* a case analogous to that here under consideration in that it involved a statutory obligation to pay, the receiver of a bank recovered from a stockholder, based upon his statutory obligation to creditors, an amount equal to the par value of his stock. This Court awarded interest from the time the obligation to pay accrued.[12] The United States has also been granted interest upon the amount of an excise tax on foreign built yachts owing to it. *Billings* v. *United States, supra.* And a shipper is entitled to interest on the amount of an excessive freight charge recovered by him from the carrier. *Arkadelphia Milling Co.* v. *St. Louis S. W. Ry. Co.,* 249 U. S. 134, 147; *L. & N. R. R. Co.* v. *Sloss-Sheffield Co.,* 269 U. S. 217, 238. In a suit upon a contract with an enemy alien maintained against the Alien Property Custodian by virtue of the Trading with the Enemy Act, which makes no provision for interest, interest upon the amount of the recovery may nevertheless be allowed. *Miller* v. *Robertson,* 266 U. S. 243. Even in a suit upon a fire policy where the damages are determined only by jury verdict, interest is proper where necessary in order to

[12] See also *Bowden* v. *Johnson,* 107 U. S. 251. In *Garvy* v. *Wilder,* 121 F. 2d 714 (C. C. A. 7), on similar facts, the stockholder's obligation to pay interest was recognized on the authority of the *Casey* case but liability to pay was held barred by the statute of limitations.

arrive at fair compensation. *Concordia Ins. Co.* v. *School District*, 282 U. S. 545.[12]

The flexibility with which this Court has treated questions respecting interest is equally illustrated by cases in which it has been denied. In *United States* v. *Sanborn*, 135 U. S. 271, the United States had paid sums to the defendant on a contract whereby he was to receive 50% of certain overdue taxes which he might collect. The Government was permitted to recover payments erroneously made to him under this contract but interest was denied owing to the unexcused ten-year delay in instituting suit for recovery. In *Board of Commissioners* v. *United States*, 308 U. S. 343, interest was denied the United States on a recovery by it, as guardian of an Indian, of taxes collected by a county on land of the Indian which, by treaty with the United States, was tax-free. The United States had erroneously given the Indian a fee simple title to the land, thus in effect authorizing imposition of the county tax, and had then failed to correct

[12] In *Jones* v. *United States*, 258 U. S. 40, the United States sued to recover the value of lands it was induced to part with through defendant's fraud. This Court affirmed the allowance of interest upon the value of the lands from the date the United States parted with them. Where one wrongfully detains money received as a stake-holder, interest as damages may be added. *Kishi* v. *Humble Oil Co.*, 10 F. 2d 356 (C. C. A. 5).

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its known error for eight years. The Court considered that allowance of interest would be manifestly unfair to the county and would give beneficiaries of federal rights preferred positions over other aggrieved local taxpayers who, by local statute, were denied interest on recovery of unowed tax exactions.

The general basis upon which interest is allowed in the federal courts was explored and the rule restated in *Royal Indemnity Co.* v. *United States,* 313 U. S. 289. The Court determined that where an obligation to pay a fixed sum is not discharged, with the result both that the debtor has, and the creditor is deprived of, the use of the money while payment is withheld, interest at a fair rate is "an appropriate measure of damage for the delay in payment" (p. 297). The Court recognized that "the rule governing the interest to be recovered as damages for delayed payment of a contractual obligation to the United States is not controlled by state statute or local common law" and continued (p. 296):

> In the absence of an applicable federal statute, it is for the federal courts to determine, according to their own criteria, the appropriate measure of damage, expressed in terms of interest, for non-payment of the amount found to be due.

In applying these principles to the present case, no reasons are apparent why interest should not be allowed on petitioner's obligations to the United

States, and elemental considerations of fairness indicate that interest should be allowed. Petitioner's obligations with respect to cotton produced and marketed in excess of marketing quotas from each of his three farms became fixed and definite by operation of the Act and the regulations thereunder on March 1 of the respective marketing years (R. 23–24). From that time until the entry of judgment upon the Government's complaint, petitioner's obligations were due and payable but were withheld. Thereby, petitioner had the use of the money and, correlatively, the United States was deprived of its use.

A determination whether interest is owing on a "penalty" under the Agricultural Adjustment Act must be decided in the light of the purpose and policies of that Act and the obligations it imposes. What Congress sought to do in the Act was to provide a constant flow of agricultural commodities, consonant with demand, and thus avoid the recurring extremes of over-production and of under-production. See *supra*, pp. 2–3. "In its effort to control total supply, the Government gave the farmer a choice which was, of course, designed to encourage cooperation and discourage non-cooperation." *Wickard* v. *Filburn*, 317 U. S. 111, 130. That is, the cotton-producer might produce and market cotton only in an amount within his quota, and thus become eligible for certain benefits (see *supra*, pp. 4–5), or he might, if he

choose, produce and market all the cotton within his ability. In the latter event, he became liable for the payment of certain sums to the Secretary of Agriculture.

Equality of dealing among all cotton producers is fundamental to the proper functioning of such an inclusive program. Those who choose to produce and market beyond-quota cotton should pay equal, and not varying, sums as a result of their election. And equality among them requires that those who pay their obligations promptly should not be prejudiced by permitting those who pay three or more years later, and only after litigation, to escape payment of interest on the sum unjustifiably withheld. Supplying a motive to pay promptly and establishing equality between those who do so and those who pay belatedly have been recognized by this Court as proper considerations in determining whether interest is owing to meet a statutory obligation. Cf. *Casey* v. *Galli*, 94 U. S. at 677–678.

The fact that neither the Act nor the administrative regulations made express provision for payment of interest is not material. It has been established and repeatedly affirmed since *Young* v. *Godbe*, 15 Wall. 562, that the absence of statutory provision for payment of interest does not preclude the award. Cf. the dissenting opinion in *Royal Indemnity Co.* v. *United States*, 313 U. S. at 297. See also *Billings* v. *United States*, 232 U. S. 261, 286, cited *supra*, p. 11. Congress must

be deemed to have legislated in view of this familiar principle and to have left the question of interest to be determined by the courts in accordance with circumstances as they arose.

Finally, it may be noted that there is here present only the naked question whether or not interest may be allowed on the penalties (R. 21). Petitioner has offered no justification for his delay and there is none. No question has been raised respecting either the period, the rate of interest, or the principal amount of the penalties. Obviously, the district court exercised a permissible discretion in fixing a rate of six per centum,[14] and in computing it from the time petitioner's respective obligations became due and payable to the date of judgment.

II

THE FINANCIAL BURDENS IMPOSED ON THE MARKETING OF EXCESS COTTON, WHILE ENTITLED "PENALTIES", ARE NOT OF SUCH A NATURE AS TO FALL WITHIN ANY RULE AGAINST THE ASSESSMENT OF INTEREST ON TRUE FINES OR PENALTIES

Petitioner's contention is that notwithstanding the rule that federal courts normally allow interest if an obligation is owed and inequitably with-

[14] By statute, Tennessee has established "legal interest" at six per centum. Michie's Tenn. Code of 1938, sec. 7302. This fact, while not controlling, may well have been considered influential by the district court. *Young* v. *Godbe*, 15 Wall. 562; *Royal Indemnity Co.* v. *United States*, 313 U. S. 289.

held, the payment which the statute requires when over-quota cotton is marketed is designated a "penalty" and that it is well settled that no interest is owing on a "penalty." This view was upheld in *United States* v. *West Texas Cottonoil Co.*, 155 F. 2d 463 (C. C. A. 5), where, however, the question arose only incidentally, and for the first time, on appeal.

In the *West Texas Cottonoil Co.* case, *supra*, the Circuit Court of Appeals for the Fifth Circuit, without discussion or citation of authority, held "that interest before judgment is not collectible on a statutory penalty unless given by the statute and that since in fact and in law the amount sued for is a penalty, no interest can be recovered on it before judgment" (p. 466).

In addition to the *West Texas Cottonoil Co.* case, petitioner relies upon decisions of state courts in which it was held that interest before judgment could not be allowed on penalties. Apart from the fact that the question is not governed by state law, these decisions are singularly unpersuasive in the instant context. Illustrative of these is the Tennessee case of *McCreary* v. *First National Bank*, 109 Tenn. 128, 70 S. W. 821, on which petitioner relies, where interest was denied on the recovery, under a federal statute, of twice the amount of interest which the defendant bank had wilfully and usuriously charged. Further typical of this group of cases

is *Blair* v. *Sioux City & P. Ry. Co.*, 109 Ia. 369, 80 N. W. 673, where a shipper recovered under a state statute three times the excessive amount of the illegal freight rate charged him. The court denied interest since the statute was penal in character and "therefore liability should be limited to the amount fixed by the statute as compensation for the damages sustained, to wit, the treble damages, attorney's fees, and costs" (109 Ia. at p. 385).[15]

On examination it will be found that the cases upon which petitioner relies as establishing a rule against interest on penalties are uniformly instances in which the statute is truly prohibitory in character and may allow a private party to recover double or triple the damages suffered or the sum involved in the transaction. In the *McCreary* case, the Tennessee court pointed out that "The act of Congress makes no provision for the allowance of interest, but fixes the amount of recovery at twice the amount of the usury charged" (109 Tenn. at p. 142). In the *Blair* case, the Iowa court stated that, "This statute is penal in character, and therefore liability should be limited to the amount fixed by the statute as compensation for the damages sustained, to wit, the treble

[15] Cf. *Wabash Ry. Co.* v. *Koenig*, 274 Fed. 909 (C. C. A. 8), certiorari denied, 257 U. S. 660. The shipper, suing to recover excessive freight charges upon principles of common law and without the benefit of a penalty statute, was awarded interest on his recovery.

damages, attorney's fees, and costs." No relevant authority was cited by either court. However, the rationale of these and similar cases seems to be that where the statute provides a measure of recovery in excess of single damages, or otherwise specifies the items to be recovered in addition to the damage suffered, the courts are not free to apply the principles that would normally govern the allowance of interest.

An analogous line of reasoning appears in this Court's decision in *Brooklyn Bank* v. *O'Neil*, 324 U. S. 697. Interest was there held not recoverable under Section 16 (b) of the Fair Labor Standards Act (52 Stat. 1060 at 1069, 29 U. S. C. Sec. 216 (b)), authorizing suits by employees to recover unpaid minimum wages or unpaid overtime compensation, and an additional equal amount as liquidated damages. This Court determined that, since Congress had seen fit to fix the sum recoverable for delay in payment, and since interest is customarily allowed as compensation for delay in payment, allowance of interest would be inconsistent with the intent of Congress and would have the effect of giving an employeee double compensation for damages arising from delay in payment of wages owed him.

We have been unable to discover any "rule of law" forbidding the award of interest on a penalty. While, at one time, "interest and usury were synonymous terms, and it was unlawful to take any money for the use of money", that has

not been true since the reign of Henry VIII."[16] Nor has there been universal agreement that interest is not recoverable on a penal bond. As this Court noted in *United States* v. *U. S. Fidelity Co.*, 236 U. S. 512, 530, while the "weight of authority in England is adverse to the recovery", in "this country the tendency of the decisions in the state courts seems to be in favor of the allowance of such interest." And while this Court itself has favored the English rule, it has done so "usually but not invariably."

But whatever rule is to be deemed controlling as to penal bonds, generally instruments reflecting the agreements of private parties, such rule is inapplicable to penalties imposed by law. For while courts of equity have been reluctant to enforce such penalty provisions where the amount of the penalty sought is not closely related to the damage reasonably anticipated, there has been no such reluctance when, as here, "the law imposes by statute a penalty for the doing or failure to do a particular act." 3 Williston, *Contracts* (1936) pp. 2178–2179."[17]

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[16] Potter, *The Law of Interest* (1910), p. 5; Perley, *Principles of the Law of Interest* (1893), pp. 1–4; 37 Henry VIII, c. 9. See also *supra*, pp. 10–14.

[17] A judgment recovered by the United States as a fine in a prosecution by indictment does not bear interest only because interest upon judgments rests solely on statutory provision and the only relevant statute provides for interest only on judgments "in civil causes." *Pierce* v. *United States*, 255 U. S. 398, 406.

Assuming, *arguendo*, however, that there is a principle that interest should not be allowed on true penalties prior to judgment, such principle would not aid the petitioner. As the court below stated (R. 40):

> We are persuaded that the so-called penalties prescribed in the Act are not in a true sense the penalties considered by the Tennessee Court upon which interest was held not recoverable. The *McCreary* case, supra, involved penalties under the National Banking Act for usury, an imposition that was definitely penal in nature and therefore subject to the rule of strict construction. There is, under the statute here involved, no prohibition upon the production or marketing of excess quota cotton. Under its power to regulate interstate commerce the Congress, to avoid a wasteful, uneconomic surplus, provided for the establishment of quotas and sought to discourage production and sale in excess of such quotas. * * * He is under no obligation to produce, and having produced is under no obligation to sell; but selling, he incurs an obligation to the Secretary of Agriculture. It is a debt which arises through operation of law. It may not be enforced by criminal sanctions, as in the case of a fine. It is not imposed as punishment but to carry out the power of Congress to regulate transactions in interstate commerce.

The obligation which the marketing quota provisions of the Agricultural Adjustment Act impose upon the petitioner is not a "penalty" in the sense in which that word is used in cases such as the *McCreary* and *Blair* cases. It differs from a true penalty in precisely those characteristics which underlie the supposed general principle that interest may not be allowed upon a penalty. That is to say, the obligation under the Agricultural Adjustment Act is not a measure of retribution which the legislature has fixed for proscribed conduct; it is, rather, in the nature of a debt arising by law upon the marketing of above-quota cotton, designed to discourage, but which does not forbid, the production and marketing by a producer of as much cotton as he pleases.

As this Court has noted, "the Government gave the farmer a choice." *Wickard* v. *Filburn*, 317 U. S. 111, 130. And in so doing, Congress made a deliberate judgment. As passed by the Senate, H. R. 8505, 75th Cong. 2d Sess., the bill which became the Agricultural Adjustment Act, contained the following pertinent provisions:

> SEC. 33 (a). The wilful marketing in interstate or foreign commerce of any cotton produced on a farm for which a quota has been established in excess of the quantity produced on such acreage is hereby prohibited unless prior to such marketing (1) the Secretary shall have, under section 7, released cotton from mar-

keting quota restrictions, or (2) the farmer shall have absorbed such excess marketing through diverting from the production of cotton an acreage, the normal production of which equals or exceeds the amount of such excess marketing. Ginning such cotton and selling it or selling the same in the seed creates a prima facie presumption that such cotton was marketed in interstate or foreign commerce in violation of this title.

(b) Any person knowingly purchasing or selling cotton marketed in violation of subsection (a) shall pay a penalty of 75 per centum of the purchase price of the cotton. Such penalty shall accrue to the United States.

This specific prohibition of above-quota marketing is in marked contrast to the permissive provisions which came out of conference (83 Cong. Rec. 1594), and which were enacted into law. Section 348, Appendix, *infra*, pp. 30–31. See also 82 Cong. Rec. 463, 83 Cong. Rec. 1657, and 82 Cong. Rec. 565–566.

In *United States* v. *Chouteau*, 102 U. S. 603, 611, this Court expressly stated that "the term 'penalty' involves the idea of punishment, and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal prosecution." Similarly, this Court in *United States* v. *LaFranca*, 282 U. S. 568, 572,

defined a penalty as "an exaction imposed by statute as punishment for an unlawful act."[18] The obligation here imposed upon petitioner is not penal in character and has none of the implications attendant upon the normal fine or penalty.

Obviously, the least important factor in determining the nature of the imposition upon above-quota marketers under the Agricultural Adjustment Act is the fact that it was designated a "penalty" in the act. For "words are inexact tools at best" (*Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479), and the legal consequences of any given set of circumstances cannot be controlled by the consequences of a dissimilar set of circumstances merely because both sets of circumstances may be loosely described by the same concept. Cf. *United States* v. *American Trucking Associations*, 310 U. S. 534, 543; *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 464.

The essential difference between the petitioner's obligation and a true penalty is revealed in *Usher* v. *United States*, 146 F. 2d 369 (C. C. A. 4), where the United States sued to recover obligations owing on account of the marketing of beyond-quota

[18] The question whether the imposition of a so-called "tax" upon the illegal distribution of liquor was actually a "penalty" was important in the *Chouteau* and *LaFranca* cases since the defendants had been previously convicted on the basis of the same transactions as to which it was asserted a "tax" was owing.

cotton. The defendant on his appeal argued that since the suit was for a "penalty", the Government had to prove its case beyond a reasonable doubt and not just by a preponderance of the evidence. In dismissing this contention, the court noted that the action was civil, and not criminal, and that the "penalty differs from an ordinary penalty which is imposed in connection with the commission of an unlawful act" p. 371. Again, in *Rodgers* v. *United States,* 138 F. 2d 992 (C. C. A. 6), the appellant there (the present petitioner), in defending a suit to require him to file farm operator's reports and to recover "penalties" for cotton marketed in excess of quota, contended that because of the "penalties" involved, the producer's obligation to furnish reports imposed by the Act and the regulations under it, compelled him "to be a witness against himself" contrary to the Fifth Amendment. This contention was rejected, the court finding it "unnecessary to discuss the nomenclature of the Act" and denominating as a "sanction" the obligations which appellant had asserted were either a tax or a penalty (p. 995).

The manner in which the so-called "penalty" here imposed is collected would seem to establish conclusively that it is not essentially penal in nature. Thus the producer may make prepayment of the penalty, or, under prescribed conditions, deposit the amount of the penalty in escrow

or give bond for the same. (See *supra*, p. 6.) If he complies with one of the alternatives, the excess cotton may be marketed and placed in the stream of commerce as freely as any other cotton. The statutory obligation is but another item of cost with which he must reckon.

Finally, it is significant that these so-called "penalties" are allowed to be deducted in computing net income as an "ordinary and necessary" business expense pursuant to Section 23 (a) (1) of the Internal Revenue Code. The general rule is that amounts paid as penalties for violation of statutes are not deductible for Federal income tax purposes either on the ground that such expenditures are not a necessary incident to the conduct of a business or on the ground of public policy. *Commissioner* v. *Longhorn Portland Cement Co.*, 148 F. 2d 276 (C. C. A. 5), certiorari denied, 326 U. S. 728; *Burroughs Building Material Co.* v. *Commissioner*, 47 F. 2d 178 (C. C. A. 2); *Great Northern Railway Co.* v. *Commissioner*, 40 F. 2d 372 (C. C. A. 8). In holding penalties under the Agricultural Adjustment Act to be deductible for income tax purposes, it has been the view of the Treasury Department that "The statute does not prohibit producers from producing the commodity, but merely places a charge on the excess of the quota produced and marketed. The so-called penalties are not paid for the violation of, or noncompli-

ance with, a statute or regulation or for any illegal act, but are paid for the purpose of legalizing the marketing of the excess production, which with this condition the statute sanctions, and are, therefore, made in compliance with the statute." I. T. 3530, 1942–1 Cum. Bull. 43. The deductible character of these "penalties" is entirely inconsistent with the penal attributes which the petitioner would establish as the basis for avoiding payment of interest.

The petitioner has failed to file farm operator's reports, as alleged in the complaint, and the purchasers of his cotton are unknown to the respondent (R. 21–22). The penalty is usually collected by the buyer within the United States and may be collected by other transferees. If a buyer collected the amount of the penalty, as he is required to do, and failed for a long period of time to remit it to the United States, it would be clearly apparent that interest would be allowed in a suit by the United States for recovery of the sum withheld. And yet the amount so collected by the buyer would still be denominated a "penalty" in the terms of the Act. There is no more reason why the producer should be permitted to withhold the payment required by the Act and fully escape any consequences of his unjustified delay in payment by defeating the claim of the United States for interest.

CONCLUSION

For the reasons stated, the judgment of the circuit court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

The Agricultural Adjustment Act of 1938, c. 30, 52 Stat. 31, as amended (7 U. S. C. 1281, *et seq.*), provides in part as follows:

SEC. 345. Whenever the Secretary determines that the total supply of cotton for any marketing year exceeds by more than 7 per centum the normal supply thereof for such marketing year, the Secretary shall proclaim such fact not later than November 15 of such marketing year (or, in case of the marketing year 1937–1938, within ten days after the date of enactment of this Act), and marketing quotas shall be in effect during the next succeeding marketing year with respect to the marketing of cotton. Cotton produced in the calendar year in which such marketing year begins shall be subject to the quotas in effect for such marketing year notwithstanding that it may be marketed prior to August 1. (7 U. S. C. 1345.)

* * * * * *

SEC. 348. Any farmer who, while farm marketing quotas are in effect, markets cotton in excess of the farm marketing quota for the marketing year for the farm on which such cotton was produced, shall be subject to the following penalties with respect to the excess so marketed: 2 cents per pound if marketed during the first marketing year when farm marketing quotas are in effect; and 3 cents per pound if marketed during any subsequent year, except that the penalty shall be 2 cents per pound if cotton of the crop subject to

penalty in the first year is marketed subject to penalty in any subsequent year. (7 U. S. C. 1348.)

* * * * *

SEC. 372. (a) The penalty with respect to the marketing, by sale, of wheat, cotton, or rice, if the sale is to any person within the United States, shall be collected by the buyer.

(b) All penalties provided for in Subtitle B shall be collected and paid in such manner, at such times, and under such conditions as the Secretary may by regulations prescribe. Such penalties shall be remitted to the Secretary by the person liable for the penalty, except that if any other person is liable for the collection of the penalty, such other person shall remit the penalty. The amount of such penalties shall be covered into the general fund of the Treasury of the United States. (7 U. S. C. 1372 (a), (b).)

* * * * *

SEC. 375. (a) The Secretary shall provide by regulations for the identification, wherever necessary, of corn, wheat, cotton, rice, peanuts, or tobacco so as to afford aid in discovering and identifying such amounts of the commodities as are subject to and such amounts thereof as are not subject to marketing restrictions in effect under this title.

(b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this title. (7 U. S. C., Supp. V, 1375.)

The Act of May 26, 1941, c. 133, 55 Stat. 203, 205, provides in part as follows:

Notwithstanding the provisions of the Agricultural Adjustment Act of 1938, as

amended (hereinafter referred to as the Act)—

* * * * *

(9) The marketing penalty for cotton and rice produced in the calendar year in which any marketing year begins (if beginning with or after the 1941–1942 marketing year) shall be at a rate equal to 50 per centum of the basic rate of the loan for cooperators for such marketing year under section 302 of the Act and this resolution. (7 U. S. C., Supp. V, 1330 (9).)

With respect to the collection and payment of penalties, the regulations of the Secretary are substantially identical for the crop years 1940–41, 1941–42, and 1942–43. The regulations for the crop year 1942–43 provide:

SEC. 722.440. *Payment and Collection of Penalties.* (a) *Time when penalties become due.* The penalty shall be due at the time the cotton is marketed by sale, barter, exchange, or gift *inter vivos.* Cotton shall be deemed to be sold when either title to or actual or constructive possession of the cotton is delivered by or on behalf of the producer or any part of the purchase price is paid. Cotton shall be deemed to have been marketed by barter or exchange when it is delivered to the transferee of the cotton by actual or constructive delivery or the transferer has received any part of the property, goods, or services for which the cotton is being bartered or exchanged. Cotton shall be deemed to have been marketed by gift *inter vivos* when there is an actual or constructive delivery of the cotton to the transferee during the lifetime of the producer. Cotton shall be deemed to have

been marketed in processed form when the producer, or some person on his behalf, converts cotton into an article of trade and thereby causes the cotton to lose its identity as seed cotton or lint cotton. An article of trade within the meaning of this provision is any article made in whole or in part from cotton for the purpose of marketing such article.

(b) *Persons liable for collection and payment of penalties.* The penalty in connection with the marketing of cotton by sale to any person within the United States shall be collected by the buyer at the time of sale. The penalty in connection with the marketing of cotton by sale to any person not within the United States or by barter or exchange or gift *inter vivos* shall be paid by the producer. In the case of a barter or exchange or gift *inter vivos*, the penalty may be collected by the person to whom such cotton is transferred, if the producer and the transferee of such cotton agree, as evidenced by the form Cotton 613 covering the transaction, that the penalty shall be collected by the transferee as in the case of the marketing of cotton by sale to any person within the United States. The penalty, if any, due in connection with the marketing of any cotton produced on any farm for which a white marketing card is issued shall not be collected by the buyer or transferee of such cotton but shall be paid by the producer. The penalty, if any, due upon cotton marketed in processed form within the meaning of paragraph (a) shall be paid by the producer or, if the producer and the buyer or transferee agree, the buyer or transferee of the article of trade into which the cotton was converted may collect and remit the penalty.

(c) *Payment of a penalty prior to the marketing of cotton.* Any penalty which would be incurred by any producer upon the marketing of cotton may be paid prior to the time such cotton is marketed, and the treasurer of the county committee for the county in which such cotton was produced shall receive the penalty as in the case of other penalties.

(d) *Manner of collection.* The penalty may be collected by the buyer by receiving the amount thereof from the producer or by deducting from the purchase price of the cotton the amount of the penalty due with respect to the marketing thereof. The penalty may be collected by the transferee by receiving the amount thereof from the producer.

(e) *Issuance of receipts for penalties collected.* Any buyer or transferee of cotton who, as provided for in paragraph (b), collects the penalty with respect to the marketing of cotton shall issue a receipt to the producer from whom the penalty is collected. (7 F. R. 4369; 1940–41 marketing year, Sec. 722.243, 5 F. R. 1894; 1941–42 marketing year, Sec. 722.343, 6 F. R. 972.)

SEC. 722.441: *Remittance of Penalties to the Treasurer of the County Committee.* (a) *Time of remittance.* The penalty shall be remitted not later than 15 calendar days next succeeding the day on which the cotton was marketed by the producer. For and on behalf of the Secretary of Agriculture, the treasurer of the county committee for the county in which the farm on which the cotton was produced is located, or the treasurer of the county committee to whom the report in connection with cotton marketed without the use of the means of identi-

fication prescribed by these regulations is made, shall receive the penalty and issue to the person remitting the penalty a receipt therefor on form Cotton 419 or form Cotton 419–A.

(b) *Form of remittance.* The penalty shall be remitted only in legal tender or by draft, check, or money order drawn payable to the order of the Treasurer of the United States. All checks, drafts, or money orders tendered in payment of the penalty shall be received by the treasurer of the county committee subject to collection and payment at par, and any receipt issued in connection therewith as provided for in paragraph (a) shall bear a notation to that effect and a description of the check, draft, or money order. (7 F. R. 4369; 1940–41 marketing year, Sec. 722.244, 5 F. R. 1894; 1941–42 marketing year Sec. 722.344, 6 F. R. 972.)

SEC. 722.453. (e) *Payment of penalty.* The penalty shall be due at the time cotton is marketed in excess of the farm or producer marketing quota and shall be remitted to the treasurer of the county committee, as otherwise provided in these regulations, at the time the farm operator's report on form Cotton 417 for the farm is required to be submitted, as provided in Sec. 722.450 (d), and no extension or qualification of the time for paying the penalty shall be made or allowed by an officer or employee of the United States Department of Agriculture, member of a county committee, other local committee, or State committee, county agent, or officer or employee of such committee or of the county agent's office. If funds are held in escrow to secure payment of the penalty,

the penalty shall be paid by the use of such funds. Any part of the funds held in escrow in excess of the penalty incurred during the marketing year shall be returned to the person depositing them, in accordance with Sec. 722.442. In the event the principal sum of the bond or the amount of funds deposited in escrow is not sufficient to cover the amount of penalties incurred in respect to the farm, the owner or operator of the farm who gave the bond or deposited the funds in escrow shall be liable for and shall pay a sufficient additional amount to cover the amount of such penalties. Nothing contained in this paragraph shall discharge the other producers on the farm from liability to pay the penalties incurred by them. (7 F. R. 4374; 1940–41 marketing year, Sec. 722.256 (e), 5 F. R. 1900; 1941–42 marketing year, Sec. 722.356 (e), 6 F. R. 978.)

U. S. GOVERNMENT PRINTING OFFICE: 1947

SUPREME COURT OF THE UNITED STATES

No. 58.—October Term, 1947.

W. Clay Rodgers, Petitioner,
v.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[November 10, 1947.]

Mr. Justice Black delivered the opinion of the Court.

In the years 1940, 1941 and 1942 the petitioner produced on his farms and sold more cotton than the quota allotted him under authority of Part IV of the Agricultural Adjustment Act of 1938 as amended. 52 Stat. 31, 55–60; 55 Stat. 203; 7 U. S. C. §§ 1281 *et seq.* The United States filed this suit against petitioner to recover money "penalties" to which § 348[1] of the Act makes non-

[1] Section 348 of the 1938 Act reads as follows:

"Any farmer who, while farm marketing quotas are in effect, markets cotton in excess of the farm marketing quota for the marketing year for the farm on which such cotton was produced, shall be subject to the following penalties with respect to the excess so marketed: 2 cents per pound if marketed during the first marketing year when farm marketing quotas are in effect; and 3 cents per pound if marketed during any subsequent year, except that the penalty shall be 2 cents per pound if cotton of the crop subject to penalty in the first year is marketed subject to penalty in any subsequent year." 52 Stat. 59; 7 U. S. C. § 1348.

The 1941 amendment required computation of the penalty on the following basis:

Notwithstanding the provisions of the Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the Act)—

. . . . . .

(9) The marketing penalty for cotton and rice produced in the calendar year in which any marketing year begins (if beginning with or after the 1941–1942 marketing year) shall be at a rate equal to 50 per centum of the basic rate of the loan for cooperators for such marketing year under section 302 of the Act and this resolution. 55 Stat. 203, 205; 7 U. S. C., Supp. V, § 1330 (9).

cooperating farmers "subject" who market cotton from their farms in excess of their quota. The District Court rendered judgment for $7,039.52 in penalties plus interest at 6% from the various dates the penalties became due to the date of judgment. The Sixth Circuit Court of Appeals affirmed. 158 F. 2d 835. The Fifth Circuit had previously decided that no interest is allowable on such penalties prior to judgment. *United States* v. *West Texas Cottonoil Co.*, 155 F. 2d 463. We therefore granted certiorari limited to this single question. — U. S. —.

Since penalties under the Agricultural Adjustment Act are imposed under an Act of Congress, they bear interest only if and to the extent such interest is required by federal law. *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697, 714–716; *Royal Indemnity Co.* v. *United States*, 313 U. S. 289, 295–297. There is no language in the Agricultural Adjustment Act or in any other act of Congress which specifically allows or forbids interest on penalties such as these prior to judgment.[1] But the failure to mention interest in statutes which create obligations has not been interpreted by this Court as manifesting an unequivocal congressional purpose that the obligation shall not bear interest. *Billings* v. *United States*, 232 U. S. 261, 284–288. For in the absence of an unequivocal prohibition of interest on such obligations, this Court has fashioned rules which granted or denied interest on particular statutory obligations by an appraisal of the congressional purpose in imposing them and in the light of general principles deemed relevant by the Court. *See, e. g., Royal Indemnity Co.* v. *United States, supra; Board of Comm'rs* v. *United States*, 308 U. S. 343.

As our prior cases show, a persuasive consideration in determining whether such obligations shall bear interest

[1] 28 U. S. C. 811 does allow interest on district court judgments in all civil cases where interest would be allowed by the law of the state in which the court is held.

is the relative equities between the beneficiaries of the obligation and those upon whom it has been imposed. And this Court has generally weighed these relative equities in accordance with the historic judicial principle that one for whose financial advantage an obligation was assumed or imposed, and who has suffered actual money damages by another's breach of that obligation, should be fairly compensated for the loss thereby sustained. *See, e. g., Brooklyn Savings Bank* v. *O'Neil, supra; United States* v. *North Carolina*, 136 U. S. 211, 216; *Funkhouser* v. *J. B. Preston Co.*, 290 U. S. 163, 168.

The contention is hardly supportable that the Federal Government suffers money damages or loss, in the common law sense, to be compensated for by interest, when one convicted of a crime fails promptly to pay a money fine assessed against him. The underlying theory of that penalty is that it is a punishment or deterrent and not a revenue-raising device; unlike a tax, it does not rest on the basic necessity of the Government to collect a carefully estimated sum of money by a particular date in order to meet its anticipated expenditures. For the foregoing reasons this Court's holding that a criminal penalty does not bear interest, *Pierce* v. *United States*, 255 U. S. 398, 405–406, is consistent with its holding that the Government does suffer recoverable damages if a taxpayer fails to pay taxes when due and is therefore equitably entitled to interest. *Billings* v. *United States, supra*. Furthermore, denial of interest on criminal penalties might well be rested on judicial unwillingness to expand punishment fixed for a criminal act beyond that which the plain language of the statute authorizes.

Viewed in light of these principles, we think that the question of interest on the penalties provided in the Agricultural Adjustment Act on non-cooperators should be governed by the rule previously applied by this Court to criminal fines. Although Congress neither wholly prohibited nor made it a crime for a farmer to market cotton

in excess of his quota, still it imposed sanctions upon non-cooperators analogous to those of the criminal law. The purpose of Congress in requiring payment of penalties into the Federal Treasury for marketing above the allotted amount was not to raise revenue for the Government's financial advantage but to deter farmers from planting and marketing more than their quotas. In fact, the whole philosophy of the Agricultural Adjustment Act is based on the theory that the public will be benefited, not damaged, if farmers produce and market within these quotas, thereby avoiding the payment of penalties. The framework of the Act itself, both as originally passed and as amended, and the reports of the congressional committees that drafted it, show a prime purpose to limit national and individual farm production and marketing to the quotas allotted, and show that the penalties were solely intended to deter farmers from exceeding those quotas.[3] After careful consideration the original 1938 Act was amended in 1941 for the express purpose of making the farmers' penalties higher, because the prior penalties had not in practice proved a severe enough sanction to reduce production the desired amount. The House committee said in its report on the 1941 amendment:

> "As in the case of corn and wheat, it appears that the present rate of penalty [for cotton] is too low to result in the desired adjustment of the amount to be marketed during the marketing year."[4]

And with reference to wheat and corn, the committee had reported:

> "With the higher penalties, it is expected that growers generally will store the farm marketing excesses

[3] Sen. Rep. No. 1295, 75th Cong., 2d Sess. 6 (1937); H. R. Rep. No. 1645, 75th Cong., 2d Sess. 1, 36 (1937); H. R. Rep. No. 1767, 75th Cong., 3d Sess. 90 (1938); H. R. Rep. No. 364, 77th Cong., 1st Sess. 3 (1941).

[4] H. R. Rep. No. 364, 77th Cong., 1st Sess. 3 (1941).

rather than pay the penalty and place the commodity on the market at the time when it is not needed."[5]

In addition to these high penalties, the Act, as originally passed and as amended, wholly deprived non-cooperators like petitioner of substantial benefits authorized by the Soil Conservation Act and of a large part of the loan value provided by the Government for cotton farmers who did not exceed their quota.[6] We are unable to say that it would be consistent with the congressional purpose for the courts to add interest to these very substantial penalties already imposed upon non-cooperating farmers.[7]

Reversed.

[5] *Id.* at 2.

[6] §§ 302 (c), 349 of the Agricultural Adjustment Act of 1938; 52 Stat. 43, 59; 7 U. S. C. § 1302 (c), 1349.

[7] See as to penalties in general, *Helwig* v. *United States*, 188 U. S. 605; *United States* v. *Chouteau*, 102 U. S. 603; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 401; *Helvering* v. *Mitchell*, 303 U. S. 391; *United States* v. *Childs*, 266 U. S. 304; *Rodgers* v. *United States*, 138 F. 2d 992. For decisions of state courts which grant interest on statutory obligations but disallow interest on statutory penalties, see cases collected in Note, 27 Ann. Cas. 1913 B, 853, 855–856; Note, 28 L. R. A. (N. S.) 1, 74–75 (1910); 1 *Sutherland, Damages*, § 330 (1916).

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Mr. Justice Burton, dissenting.

The sums due to the Government are fixed obligations with fixed times of payment. They are debts incidental to the lawful conduct of business and not penalties imposed for violations of law. Accordingly, the debtor should pay and the Government should collect interest on them, as on other debts to the Government, to compensate for delays in their payment. The Agricultural Adjustment Act expressly fixed the amount and time for payment of the sums in question although it did not expressly mention the accrual or denial of interest on delayed payments. However, the federal rule is well-established that, without express statutory reference to the subject of interest, interest is due to the Government on unpaid statutory debts after they have become due in fixed amounts at fixed times, such as those for customs duties and taxes.

> "Thus, as to the necessity for a statute it was long ago here decided in view of the true conception of interest, that a statute was not necessary to compel its payment where in accordance with the principles of equity and justice in the enforcement of an obligation, interest should be allowed." *Billings* v. *United States*, 232 U. S. 261, 286.[1]

This statement was made by Chief Justice White, speaking for the Court, in a case upholding the collection

[1] "The conflict between the systems is pronounced and fundamental. In the one, the state rule, except as to contract, no interest without statute; in the United States rule, interest in all cases where equitably due unless forbidden by statute. In one no suit for taxes as a debt

of interest on a tax payable to the United States, under a statute that contained no reference to the accrual of interest.

The requirement that interest be paid to the Government upon the debts due to it under the Agricultural Adjustment Act not only is "in accordance with the principles of equity and justice" called for by the general rule just stated but the accrual of interest in favor of the Government under that Act also is thoroughly consistent with, and helpful to, the accomplishment of its purpose of price and crop control. The disallowance of such interest is equally inconsistent with, and a limitation upon, the accomplishment of that purpose.

The defaulted payments on which interest is claimed here became due because of the petitioner's sales of cotton in excess of his statutory quota and such payments are referred to in the Act as "penalties." However, the context shows that, instead of being criminal penalties imposed for violations of the law, they are "marketing penalties" consisting of governmental charges added to the presale expenses of the seller, especially to help keep prices and sales in line with the economic program of the Government. Satisfaction of these charges is made a condition of the seller's *legal* right to sell his excess cotton at a particular time. They are the very opposite of penalties imposed for making *illegal* sales. They are law-

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without express statutory authority, in the other the right to sue for taxes as for a debt in every case where not prohibited by statute.

"From this review it results that the doctrine as to nonliability to pay interest for taxes which have become due which prevails in the state courts is absolutely in conflict with the doctrine applied to the same subject in this court and cannot now be made the rule without repudiating settled principles which have been here applied for many years in various aspects and without in effect disregarding the sanction either expressly or impliedly given by Congress to such rules. . . . Under this condition we can see no ground for departing from the rule which the cases enforced, ..." *Billings* v. *United States*, *supra*, at pp. 287–288.

ful, "ordinary and necessary" business expenses incidental to his sales. They are deductible from his taxable income, whereas criminal penalties are not deductible from taxable income.[2] These "marketing penalties" are also unlike criminal penalties in that they may be paid in advance, deposited in escrow or security given for their payment. When that is done, the seller may, in his usual manner, dispose of the excess-quota cotton to which the payments relate. Cotton marketing quota regulations, 1942–43, § 722.440 (c), 7 Fed. Reg. 4369; *id.* § 722.453, 7 Fed. Reg. 4374. These debts are more comparable to customs duties than to criminal penalties.[3] Apparently these charges are collectible by the Government only by civil proceed-

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[2] "Although the amounts paid by the producer are designated as penalties in the statute and regulations referred to above, it appears that the purpose of the statute is to place a charge against the producer on the sale of the commodity which was produced in excess of the quota. The statute does not prohibit producers from producing the commodity, but merely places a charge on the excess of the quota produced and marketed. The so-called penalties are not paid for the violation of, or noncompliance with, a statute or regulation or for any illegal act, but are paid for the purpose of legalizing the marketing of the excess production, which with this condition the statute sanctions, and are, therefore, made in compliance with the statute. It is accordingly the view of this office that the so-called penalties are deductible from gross income under section 23 (a) of the Internal Revenue Code in computing net income as ordinary and necessary expenses incurred in carrying on a trade or business." I. T. 3530, 1942–1 Cum. Bull., 43, 45–46.

Payments in the nature of penalties for the *violation* of federal or state statutes in the ordinary use of that term are not deductible. *Commissioner* v. *Longhorn Portland Cement Co.*, 148 F. 2d 276; *Burroughs Bldg. Material Co.* v. *Commissioner*, 47 F. 2d 178; *Great Northern R. Co.* v. *Commissioner*, 40 F. 2d 372.

[3] Customs duties are personal debts to the United States. *Meredith* v. *United States*, 13 Pet. 486, 493. Interest is collectible on the debt to the Government arising out of the imposition of customs duties. *United States* v. *Mexican International R. Co.*, 154 F. 591. It is common knowledge that, while some customs duties or tariffs

ings and liability for them need not be established beyond a reasonable doubt. *Usher* v. *United States*, 146 F. 2d 369, 371.

The payments are imposed in part for revenue purposes although especially as a means of inducing cotton owners to control their sales of cotton in interstate and foreign commerce in accordance with the economic policies of the Government. During its consideration of the Agricultural Adjustment Act, Congress declined to adopt a proposal to treat such sales as in violation of law [4] and adopted instead the policy recognizing such sales as lawful sales conditioned upon payment to the Government of the charges here being considered. Financial burdens which may be postponed without the payment of interest are much less burdensome than those that are not postponable or that are subject to the accrual of interest during their postponement. The omission of the usual interest charge on postponed marketing penalties therefore decreases the force of the Act as a deterring factor and runs counter to the special purpose of the Act.

For those reasons, the judgment of the Circuit Court of Appeals, affirming that of the District Court allowing interest from the date of default, should have been affirmed.

MR. JUSTICE RUTLEDGE joins in this dissent.

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may have been levied "for revenue only," many have been enacted as "protective tariffs" in which a primary interest of the Government was, as under the Agricultural Adjustment Act, to restrict the flooding of the market with certain goods at a certain time. The collection of interest on delayed payments of customs duties would bear a similar relation of helpfulness to the Government's economic and financial policies as would the collection of interest on defaulted market penalties. The Government, under the Agricultural Adjustment Act, not only seeks to restrict excess-quota sales, but it also seeks to add to its current cash resources from which it proposes to make the loans to cooperating producers which are authorized by the Act.

[4] § 33, H. R. 8505, 75th Cong., 2d Sess. (1937), as passed by the Senate but later rejected.